



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-038

August 29, 2023

Department of Forestry, Fisheries and Agriculture

Summary:

The Complainant requested information from the Department of Fisheries, Forestry and Agriculture (FFA) related to a parcel of Crown Land. The search conducted by FFA did produce the responsive records sought, though with one paragraph redacted under a claim of section 29(1)(a) of *ATIPPA, 2015*. There was also one responsive record that contained information on additional responsive records that were not provided by FFA. To meet its section 13 duty to assist, FFA performed a second search for documents named in the responsive records but not disclosed and this search produced no further records. The second search for records conducted by FFA was reasonable and the Department provided a detailed reason as to why these other documents could not be found. With respect to FFA's claim of section 29(1)(a), a review by this Office concluded that this exception was appropriately applied.

Statutes Cited:

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

Authorities Relied On:

NL OIPC [Report A-2023-006](#).

BACKGROUND

[1] The Complainant submitted the following request to the Department of Fisheries, Forestry, and Agriculture (“FFA”):

Crown Lands file [number] Location: [municipality].

1. *Copy of surveyor search/inquiry report from local residents done on [owner’s name] land for building lot leases 1978/79.*
2. *Copy of [FFA employee’s] inspection report done on [owner’s name] land July 18, 1979.*
3. *Copy of inspection report done on [owner name] land in 2012 by [FFA employees].*
4. *Copy of notes of meeting [held on July 5, 2017 with the Complainant and [three named individuals]*

[2] The search conducted by FFA did produce the records that the Complainant was expecting. However, in reviewing the records provided, the Complainant noticed that one record referenced attachments that were not provided by FFA. The Complainant raised this matter with FFA, which did conduct a further search but could not locate the missing documents. Also, in a Crown Lands Inspection Report, the Department had redacted a paragraph pursuant to section 29(1)(a) of *ATIPPA, 2015*.

[3] The Complainant requested that this Office review the search performed by FFA to assess whether the Department met its duty to assist as set out in section 13(1) of *ATIPPA, 2015* and to determine whether section 29(1)(a) was properly applied.

[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] It is the position of FFA that it conducted a reasonable search in the first instance and again during its second search to try to locate the documents mentioned in the responsive

records. FFA stated that those with the proper subject matter expertise and understanding of FFA's databases and filing systems searched both digital and physical files. Further, FFA states that the information redacted in the Crown Lands Inspection Report falls clearly within the section 29(1)(a) exception to disclosure as it provides a recommendation.

COMPLAINANT'S POSITION

- [6] It is the position of the Complainant that since records that were not located or provided had been submitted to Department as part of a land survey, then FFA must have possession of them in some form. With respect to section 29(1)(a), the Complainant is seeking the opinion of this Office as to whether it was properly applied as the Complainant is not familiar with the particulars of *ATIPPA, 2015*.

DECISION

- [7] The sections of *ATIPPA, 2015* relevant to this matter are 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.

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.

- [8] This Office has established in numerous reports that the standard a public body must meet in conducting a search for responsive records is reasonableness, not perfection. A reasonable search is organized, conducted using appropriate search terms, and carried out by individuals with subject matter expertise.
- [9] This Office has also established a standard that a Complainant must meet when asserting that not all records were disclosed, though the Public Body has conducted a reasonable

search. As stated in paragraph 17 of Report A-2023-026, a Complainant asserting that additional records must exist:

...must establish the existence of a reasonable suspicion that a public body is withholding a record, or has not undertaken an adequate search for a record. Sometimes, this takes the form of having possession of or having previously seen a document that was not included with other responsive records or media reports regarding the documents.

[10] In this case, it seems that FFA did perform a reasonable search for responsive records based on the Complainant's request. The request was quite specific and the Complainant did receive the documents they were expecting. However, one of the responsive records references further documents that are clearly responsive to the Complainant's request, though were not included in the Department's final response. Thus, the Complainant has met the reasonable suspicion standard needed to assert that a further search for responsive records by FFA is warranted.

[11] FFA agrees that the documents not provided to the Complainant are responsive. However, FFA asserts that the documents have either been destroyed or were never in the possession of the Department. The challenge with the documents in question is that they were created in 1979, 44 years ago. While the age of the documents is irrelevant to the quality of the search to locate them, the age of the documents is relevant to understanding the standards applied to document retention and filing in the late 1970s. It is unfair to the Public Body to apply modern information management systems to a time when every document was in physical, not digital, form.

[12] FFA did perform a reasonable search to locate the records in question. A Director of Crown Lands who is familiar with how and where physical documents are stored led the search. When this search did not produce the documents in question, the Director reached out to those in Crown Lands with knowledge of how documents were managed in the late 1970s. These individuals reviewed the responsive record that mentioned the attachments and noted that the responsive record in possession by Crown Lands was a copy and not the original. In the late 1970s, original documents were not required and Crown Lands may have just accepted the copy. If that was the case, it is possible that the attachments were not

submitted to Crown Lands and remain with the person who conducted the survey. Crown Lands also advised that in the late 1970s the attachments like those mentioned in the responsive record were not viewed as needed by the Department and that such attachments were routinely detached from the main document and discarded. There was no consistent treatment of these attachments, and some were kept and others thrown away. Regardless, after a reasonable search FFA was unable to locate the documents originally attached to the responsive record provided to the Complainant.

[13] With respect to the application of section 29(1)(a) to a paragraph in the 2012 Crown Lands Inspection Report, the information redacted contained the advice of the Crown Lands Inspector relating to a Crown Lands application. For the time being, withholding this information is at the discretion of FFA. In May 2027, FFA's discretion to withhold this information will lapse.

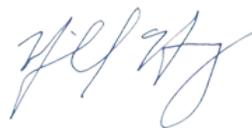
RECOMMENDATIONS

[14] Under the authority of section 47 of *ATIPPA, 2015*, I find that the Department of Fisheries, Forestry and Agriculture 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 maintain its position regarding these matters.

[15] Further under the authority of section 47 of *ATIPPA, 2015*, I find that the information currently being withheld by the Department is in accordance with section 29(1)(a) of *ATIPPA, 2015* and I recommend that the Department continue to withhold this information.

[16] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Fisheries, Forestry and Agriculture 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.

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 29TH day of August 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador