



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2010-015

October 13, 2010

Department of Justice

Summary:

The Applicant applied to the Department of Justice (the “Department”) under the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*”) for access to information relating to certain individuals alleged to be Commissioners of Oaths, Commissioners of Oaths in general, certain government employees and former railway land in Brigus Junction. The Department granted access to the records in part, severing portions of the records pursuant to section 30(1) (disclosure of personal information) of the *ATIPPA*. The Department also indicated that it did not have any responsive records in respect of a portion of the access request and it felt it had insufficient detail about another aspect of the access request to enable it to locate records in that regard. Finally, the Department went on to direct the Applicant to alternate sources of the information it had provided and potential additional, related information outside the Department’s custody and control. The Commissioner determined that the Department provided all responsive records to the Applicant and that the Department was correct in its application of section 30(1). Further, the Commissioner found that the search conducted by the Department and the corresponding response was reasonable. Finally, the Commissioner found that the action by the Department to dismiss a part of the Applicant’s access request due to insufficient detail without first contacting the Applicant for further clarification was inappropriate and contrary to the Department’s duties under the *ATIPPA*. Consequently, the Commissioner recommended that, in the future, the Department make every reasonable effort to assist applicants in making access requests such that the public body can properly and fully respond.

Statutes Cited:

Access to Information and Protection of Privacy Act, S.N.L. 2002, c. A-1.1, as amended, ss. 2(o), 9, 13, 30(1) & 30(2)(k).

I BACKGROUND

- [1] In accordance with the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*” or the “*Act*”) the Applicant submitted an access to information request to the Department of Justice (the “Department”) on May 13, 2010, in which he requested disclosure of records as follows:

Access to the records and information copy of [seven named individuals] application form they done out to be commissioner for oaths, do it require a person to be in a position of trust witness a person(s) name on a legal document crown land application, lease, grant, licence, issued for the commercial, etc. Copy of the receipts amount paid who issued it, and who was the person who approved it. [Two named individuals] how long are they working for the provincial government and what Departments Y/M/D started. What their salary is per year. Did the Department of Justice also claim the railway land in Brigus Junction on both side's of the railway track or just one side of did it claim the land at all when it was transferred in May 1993 to the Government.

- [2] The Department responded to this request on June 16, 2010 indicating that access was being granted in part. Records and information were provided to the Applicant; however, portions of those records were severed in accordance with section 30(1) of the *ATTIPA*, as personal information. Additionally, the Department noted that it had no records responsive to one of the named individuals or to the Applicant’s question regarding “a position of trust”. The Department also indicated that it felt it had insufficient detail about the “copy of receipts” portion of the request to enable it to locate records in that regard. Finally, despite providing responsive records in respect of the Applicant’s question regarding railway land, the Department directed the Applicant to alternate sources of this information and potential additional information outside the Department’s custody and control.
- [3] In a Request for Review dated and received in this Office on July 13, 2010, the Applicant asked for a review of the decisions made by the Department. Specifically, the Applicant wanted: additional records which he believes must exist, including information about one of the named individuals and copies of receipts; a review of the severing; and additional information regarding the employment of certain named individuals. The Applicant also requested additional information not previously requested in his access request. As new records and information may not be requested in a Request for Review this latter matter will not be dealt with in this Report.

[4] Efforts by an investigator from this Office to facilitate an informal resolution were unsuccessful and, by letters dated September 9, 2010, the parties were advised that the Request for Review had been referred for formal investigation as per section 46(2) of the *ATIPPA*. As part of the formal investigation process and in accordance with section 47 of the *ATIPPA*, both parties were given the opportunity to provide written submissions to this Office.

[5] The Department made no formal submissions. The Applicant provided a lengthy formal submission; however, a great deal of the submission was unclear and simply repeated the statements made by the investigator during informal resolution in this matter. Consequently, this Office has proceeded on the basis that the arguments made by the Applicant continue to be those made in his Request for Review and that the Applicant continues to disagree with the decision of the Department.

II DISCUSSION

[6] The issues to be decided are as follows:

1. Do additional records or information exist which are responsive to the Applicant's access request but which have not yet been provided to the Applicant?
2. Was the severed information properly withheld under section 30(1) of the *ATIPPA*?

1. Do additional records or information exist which are responsive to the Applicant's access request but which have not yet been provided to the Applicant?

[7] The Applicant requested information regarding certain individuals whom he alleges are Commissioners of Oaths, including their respective applications. The Department provided the Applicant with these records, with information severed in accordance with section 30(1), for all but one named individual. The Department has since explained that it does not have records in respect of this individual and this individual is not, in fact, named in its database of Commissioners of Oaths. The Department maintains a database of all individuals who are Commissioner of Oaths and has done so since May, 1992. If an individual is a Commissioner of Oaths, their name will be entered in this database. Consequently, I have concluded that despite the assertions of the Applicant, which

are based on documentation which the Applicant has but which this Office has not seen, there is no reason to believe that Commissioner of Oath documentation should exist at the Department for this person. The Department has provided all responsive records in this regard.

[8] In respect of the Applicant's request for receipts, the Department has indicated that it does not always maintain this type of record. The Department does not have a policy which requires it to retain copies of the receipts it issues. Rather, the Department issues receipts to persons as necessary and, on occasion, those receipts may be kept and placed in the relevant file, but this is not necessarily done. Persons to whom the receipts are issued may maintain their copy of their receipt, but there is no obligation or policy which requires the Department to maintain copies. The Department may wish to consider developing a records retention policy to cover these receipts in order to establish some consistency, which would provide greater clarity. Based on my assessment, however, the Department has provided all responsive record.

[9] However, in further respect of the Applicant's request for receipts, the Department initially indicated that it felt it had insufficient detail to properly search for the requested records and, therefore, was unable to provide any records to the Applicant.

[10] Section 9 and 13 of the *ATIPPA* state:

9. 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.

13. The head of a public body may refuse to disclose a record or part of a record where the request is repetitive or incomprehensible or is for information already provided to the applicant.

[11] The Applicant requested "[c]opy of the receipts amount paid who issued it, and who was the person who approved it?". There is nothing incomprehensible about this aspect of the Applicant's request, rather it was slightly confusing as to what particular receipts the Applicant was referring to. This could have and should have been clarified by the Department with the Applicant. In accordance with the Department's duties under the *Act*, a public body should contact an applicant, in writing or verbally, where it is simply unclear what an applicant is requesting. This failing on the part of the Department is a breach of the Department's duty to assist under section 9.

[12] As stated in other Reports from this Office, the duty placed on a public body under the *ATIPPA* does not require a public body to create a record where one does not exist in response to an access request. Where an applicant poses a question and the information which forms the answer to that question is not contained in a record, the public body is entitled to state that it has no records responsive to that request. The answer to the Applicant's questions regarding a "position of trust" is not contained within a record and, therefore, the Department is entitled to indicate that no records exist.

[13] Likewise, in respect of the information requested by the Applicant regarding the employment of certain individuals, the Department is only obligated to disclose information about certain aspects of the employment of persons by a public body. Where an individual is not employed by a public body or where no information exists about certain aspects of a person's employment with a public body, the responding public body may properly indicate that no records exist.

2. *Was the severed information properly withheld under section 30(1) of the ATIPPA?*

[14] Section 30(1) of the *ATIPPA* states:

30. (1) The head of a public body shall refuse to disclose personal information to an applicant.

[15] Section 2 of the *ATIPPA* defines "personal information" as:

[...] *recorded information about an identifiable individual, including*

- (i) the individual's name, address or telephone number,*
- (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,*
- (iii) the individual's age, sex, sexual orientation, marital status or family status,*
- (iv) an identifying number, symbol or other particular assigned to the individual,*
- (v) the individual's fingerprints, blood type or inheritable characteristics,*
- (vi) information about the individual's health care status or history, including a physical or mental disability,*
- (vii) information about the individual's educational, financial, criminal or employment status or history,*
- (viii) the opinions of a person about the individual, and*
- (ix) the individual's personal views or opinions*

[16] The information which has been severed by the Department is information contained on the Commissioner of Oaths application form and includes names, home addresses, contact and employment information and, therefore, is personal information. I note, however, that where the Commissioner of Oaths applicant was an employee of a public body, the employment information for that individual has been disclosed.

[17] I must now turn my attention to section 30(2) to determine if there is an exception to the exemption from disclosure contained in section 30(1) (i.e. a provision which provides for the disclosure of this information). Section 30(2)(k) states:

30. [...]

(2) Subsection (1) does not apply where

[...]

(k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;

[18] As mentioned above the severed information is information supplied on Commissioner of Oaths applications. While the designation of Commissioner of Oaths may be a discretionary benefit, the severed information is personal information supplied by named individuals in support of their applications to become Commissioner of Oaths.

[19] The Department has indicated that if a member of the public wishes to contact a Commissioner of Oaths, the Department provides a list of names and, if requested, business telephone numbers of Commissioner of Oaths in the relevant area. Consequently, this information (i.e. names and business telephone numbers) is publicly available and should not be withheld. Accordingly, the Department has released the names and business telephone numbers of all but one named individual. In respect of this individual, the business telephone number has been withheld as to disclose this information would reveal additional employment information about the named individual which the Department is entitled to withhold.

[20] The Department has properly severed all information for which it has cited section 30(1) of the *ATIPPA*.

III CONCLUSION

[21] I have found that there are no additional records or information which are responsive to the Applicant's request which have not yet been provided to the Applicant.

[22] I have further found that all of the information in the records for which section 30(1) has been claimed has been properly withheld from disclosure by the Department.

[23] Finally, I have found that while the Department did, ultimately, provide a full response to Applicant's access request, it initially failed to do so in accordance with the *ATIPPA*. The Department had a duty to "make every reasonable effort to assist" the Applicant in making his request. While there may have been some confusion as to the contents of the Applicant's access request there was nothing incomprehensible about it. The Department made no efforts to contact the Applicant to clarify those portions of the request. This was a failure to meet its obligations under the *Act* and a breach of the Department's duty under section 9. This has been communicated to the Department. The Department has agreed to seek further clarification from applicants in the future where necessary.

IV RECOMMENDATIONS

[24] Having carefully reviewed the records provided by the Department and the submissions of the parties, under the authority of section 49(1) of the *ATIPPA*, I hereby recommend that in the future the Department make every reasonable effort to assist applicants in making access requests, including seeking clarification from applicants where there is uncertainty about the content of an access request

[25] Accordingly, under authority of section 50 of the *ATIPPA* I direct the head of the Department to write to this Office and to the Applicant within 15 days after receiving this Report to indicate its final decision with respect to this Report.

[26] Please note that within 30 days of receiving a decision of the Department under section 50, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador, Trial Division in accordance with section 60 of the *ATIPPA*.

[27] Dated at St. John's, in the Province of Newfoundland and Labrador, this 13th day of October, 2010.

E. P. Ring
Information and Privacy Commissioner
Newfoundland and Labrador

