



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2011-008

May 5, 2011

Office of the Premier

Summary:

The Applicant submitted an access to information request to the Office of the Premier for records concerning a message left by the Applicant for the Premier. The Office of the Premier replied to the access request indicating that the message had been forwarded to the relevant department. In their reiteration of the Applicant's request, the Office of the Premier inserted the term "(sic)". This Office received a Request for Review which cited a failure of the duty to assist pursuant to section 9 of the *Access to Information and Protection of Privacy Act* which sought as a resolution a written explanation of "(sic)". The Commissioner determined there had been no failure in the duty to assist by the Office of the Premier.

Statutes Cited:

Access to Information and Protection of Privacy Act, S.N.L. 2002, c. A-1.1, as amended, section 9.

Authorities Cited:

Newfoundland and Labrador OIPC Reports A-2011-006 and A-2009-011

Other Resources:

Review of the Access to Information and Protection of Privacy Act, January 2011, found at: http://www.justice.gov.nl.ca/just/publications/ATIPPA_Review_Report.pdf

I BACKGROUND

- [1] In accordance with the *Access to Information and Protection of Privacy Act* (“ATIPPA” or “Act”) the Applicant made an access request to the Office of the Premier on July 7, 2010 which stated:

Access to the records/information did the Premier get the message applicant gave to the secretary on May 28, 2010 when the applicant called the Premier’s Office about the scandal going on in [named place], and if so, what action the Premier is going to take or know action at all. Name of the secretary applicant gave this message to. Also like to know how could Crown land officials claim private land and change it to Crown land so [a named individual] could keep it when the land belongs to the applicant, he got the evidence to back it up. Is any action going to be taken against [a named individual] for burying car wrecks on that land, oil is running out in the ground.

- [2] In their response letter, dated August 9, 2010, the Office of the Premier indicated the name of the secretary who had received the message and indicated that the matter had been referred to the Department of Environment and Conservation. The Office of the Premier also noted that they had no records responsive to the balance of the request. In this response letter, when they restated the Applicant’s access request, they added the notation “(sic)” after the word “know” on the 5th line in the above quoted access request.

- [3] In a Request for Review dated August 23, 2010, the Applicant filed the following Request for Review with this Office:

Failure to act and a failure to fulfill that duty to assist the applicant in a open and accurate and complete manner under section 9 of the Act on the scandal criminal act going on with Crown Land officials and [a named individual] and his friends to get land and change private land to Crown land and Crown land to private land to sell for \$14,000 and issue leases and grants for those illegal criminal act and provide receipts at the Howley Building only in Newfoundland. Remedy, when a public body use the initials (SIC) in the applicant’s statement then you would think the onus would be on that public body explain to the applicant in writing what it meant and this applicant had a right to know to take it to the media because Government is turning their back on [named individuals] and the [a number] illegal building [a named individual] put their in 1976 personal gain.

[4] On August 25, 2010 the Office of the Premier explained to this Office that the abbreviation “sic” was “intended to indicate that the quoted passage, one containing an error or unconventional spelling, had been retained in its original form.”

[5] On October 4, 2010, an analyst from this Office wrote to the Applicant and indicated the Office of the Premier’s explanation of their use of the word “sic”. This response was not satisfactory to the Applicant as he indicated he wanted the explanation to be in writing and to come directly from the Public Body.

[6] Therefore this Request for Review was not resolved by informal means and by letters dated January 25, 2011 both the Applicant and the Office of the Premier were advised that the Request for Review had been referred for formal investigation pursuant to subsection 46(2) of the *ATIPPA*. As part of the formal investigation process, both parties were given the opportunity to provide written submissions to this Office in accordance with section 47.

II THE SUBMISSIONS

[7] Neither the Applicant nor the Office of the Premier provided any further written submissions.

III DISCUSSION

[8] The duty to assist is set out in section 9 of the *ATIPPA* and reads:

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.

[9] In Report A-2011-006 I recently referenced a Report of my predecessor, A-2009-011, that discussed the elements of the duty to assist:

[80] The duty to assist, then, may be understood as having three separate components. First, the public body must assist an applicant in the early stages of making a request. Second, it must conduct a reasonable search for the requested records. Third, it must respond to the applicant in an open, accurate and complete manner. . .

[10] The Office of the Premier, in my view, did respond to the Applicant in an open, accurate and complete manner in this case. The use of the word “sic”, while confusing to the Applicant, was explained upon request by this Office and would likely have been explained to the Applicant directly had he chosen to telephone the Public Body directly (as suggested in the letter from the Public Body which stated “if you have any further questions, please feel free to contact the under signed at” the number provided). Instead the Applicant chose to make a complaint to this Office.

[11] The word “sic” has an established dictionary meaning. By insisting that the Office of the Premier provide an explanation in writing and refusing to resolve this matter informally, the Applicant has wasted the resources of this Office and of the Office of the Premier on an insignificant and frivolous matter.

[12] To help avoid situations like this in the future, this Office made recommendations to the ATIPPA Review Commissioner, Mr. John Cummings, Q.C. to allow greater latitude to the Commissioner to decline to conduct a formal investigation and issue a Report. Commissioner Cummings made the following recommendation arising out of his review, referring to formal investigation as a “review”:

Recommendation 22

The ATIPPA should be amended to include provisions modeled on subsections 67 (2) and (3) of the Province’s PHIA [Personal Health Information Act] which specify that the Commissioner must conduct a review only when there are reasonable grounds to do so, and provide that the Commissioner may decline a review if:

- (i) the public body has responded adequately to the request;*
- (ii) the complaint has been or could appropriately be resolved by an alternate procedure;*
- (iii) the lapse of time between the date when the complaint arose and the filing of a request for review is so great it will likely cause undue prejudice or a report would serve no useful purpose; or*
- (iv) the request for review is trivial, frivolous, vexatious or is made in bad faith.*

IV CONCLUSION

[13] The Office of the Premier did not fail its duty to assist and provided the Applicant with an open, accurate and complete response within 30 days of receiving his request, as required by the *ATIPPA*. I therefore have no recommendations.

V RECOMMENDATIONS

[14] Although I have made no recommendations, under the authority of section 50 of the *ATIPPA*, I direct the head of the Office of the Premier to write to this Office and to the Applicant within 15 days after receiving this Report to indicate their final decision with respect to this Report.

[15] In addition, I hereby notify the Applicant, in accordance with section 49(2) of the *ATIPPA*, that they have a right to appeal the decision of the Office of the Premier to the Supreme Court of Newfoundland and Labrador, Trial Division in accordance with section 60. The Applicant must file any appeal within 30 days after receiving a decision of the Office of the Premier referenced above.

[16] Dated at St. John's, in the Province of Newfoundland and Labrador, this 5th day of May 2011.

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