



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2010-0014

October 13, 2010

### Department of Transportation and Works

#### Summary:

The Applicant applied to the Department of Transportation and Works (the “Department”) under the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*”) for access to information relating to a fuel oil spill and clean-up and information relating to certain government employees. The Department granted access to all records requested by the Applicant; however, the Department severed portions of these records citing section 30(1) (disclosure of personal information) of the *ATIPPA*. It later became apparent that the Department intended certain information to be implicit from the information it provided to the Applicant; however, this was not clear to the Applicant. As a result, during the informal resolution process the Department provided additional information which clarified and better responded to the Applicant’s access request. 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). The Commissioner also found that the initial response of the Department did not explicitly satisfy the Applicant’s access request. However, this was not due to any malice or bad faith on the part of the Department and was remedied immediately after the issue was raised by this Office. Consequently, the Commissioner made no recommendations to the Department. The Commissioner did, however, suggest that the Department attempt to reply to applicants in the clearest manner possible.

#### Statutes Cited:

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

## 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 Transportation and Works (the “Department”) on June 8, 2010, in which he requested disclosure of records as follows:

*Access to the records/information documents provided to the Applicant after appeal to the Privacy Commissioner's Office that fuel oil was discovered inside existing concrete culvert during removal STA 33+814. At what area at a Whitbourne intersection was this fuel oil located 12,712 litres and Pardy's Waste Services was hired to vacuum it up. What did it cost the tax payers of the province to have this fuel oil cleaned up. Year, month, day, [named individual], Engineer III started in that job with transportation and works or works, services and transportation and finished and year, month, day it was and is he still working with the provincial government today. Year, month, day [named individual], Senior Environmental Planner started and finished in that job with t.H. [sic] or w.s.t. and is he still working in government today.*

- [2] The Department responded to this request on July 9, 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.
- [3] In a Request for Review dated and received in this Office July 22, 2010, the Applicant asked for a review of the decision of the Department. Specifically, the Applicant wanted: a more specific response as to the location of the fuel oil spill; to be provided with additional records which were referred to on the records already provided to the Applicant; a review of the severing; and additional information regarding the employment of the named government employees.
- [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 submission. The Applicant provided a lengthy formal submission; however, a great deal of the submission was unclear and referenced matters outside the scope of this matter. Generally, this Office understands from the Applicant's submission that he continues to disagree with the decision of the Department in the same manner as outlined in his Request for Review.

## 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*?

I will also comment on the additional information which was provided to the Applicant during the informal resolution process and the reason behind the failure to provide this information to the Applicant initially.

*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 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 is not contained in a record, the public body is generally entitled to state that it has no records responsive to that request. Generally speaking, public bodies should be encouraged to provide information to members of the public when requested, whether the information is in recorded form or not. However, the *ATIPPA* only applies to information in recorded form.

[8] The Applicant requested information regarding the location of a fuel oil spill and clean-up. The Department provided the Applicant with an engineering drawing depicting this information. It is the Applicant's position that the Department must have a better, written description of this information.

[9] There is no evidence that any additional, written record exists describing the location of the fuel oil spill and clean-up. If such did exist I can think of no reason why the Department would withhold such information given that it has already provided a depiction of the same information. It may be that the Department has many depictions of this area. In fact, it is likely that the Department had multiple depictions of this area in the form of maps, schematics, drawings, and pictures, but the Department has provided the record which is responsive to the Applicant's request in that it is the record which pinpoints the area of the fuel oil spill and expressly marks that area. It would be redundant, and indeed unnecessary, for the Department to locate and provide each and every depiction of this area inclusive of those which have no direct relation to the fuel oil spill. To this end, the Department has provided all responsive records.

[10] Additionally, on the engineering drawing there were references to other documents. These other documents are unresponsive to the Applicant's request for the location of the fuel oil spill. Consequently, the Department is under no obligation to provide the Applicant with these records under the Applicant's current access request.

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

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

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

[12] 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*

[13] Certain information which has been severed by the Department includes the names and addresses of individuals who are not public body employees and, therefore, is personal information. The remaining pieces of severed information are unrelated and unresponsive to the Applicant's request. Therefore, all information has been properly severed under the *ATIPPA*.

[14] Finally, with respect to the response of the Department to the questions regarding certain government employees, the Department provided what it felt was a full response to the Applicant. The questions posed related to the start date and retirement date of two individuals. The Department provided the start date and retirement date for one of these individuals, but only provided the start date for the other individual. The implication of this was that the latter individual had not yet retired. Unfortunately, this response required the Applicant to read in, by implication, this information. While this information may have been clear to certain persons reading the Department's response, it is possible that it would not be clear to all persons. I do not believe there was any malice or bad faith on the part of the Department in making the assumption that the Applicant would understand that the retirement date of the other individual had not been provided because he had not yet retired. Regardless, the Department immediately provided the information using the clearest possible terms when requested to do so by this Office.

### III CONCLUSION

[15] I have found that there are no additional records which exist in respect of the location of the fuel oil spill. The Department has provided the responsive record which delineates the area of the spill and it has no additional records which better describe that area.

[16] 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. Other information which has been severed has been properly withheld as being non-responsive to the Applicant's request.

[17] Finally, I have found that while the Department did provide a response to the Applicant's questions regarding the start and retirement dates of two individuals, the Department did not explicitly state that one of the named individuals had not yet retired. A public body does not have an obligation to create a record to satisfy an applicant's request. However, from time to time a public

body may choose to do so in order to assist the applicant; such is the situation in this matter. It should be noted that where a public body chooses to do so the public body should make every effort to ensure that the information being provided is readily understandable and clear to the applicant.

#### IV RECOMMENDATIONS

[18] Having reviewed the records provided by the Department and the submission of the Applicant, I conclude that the Department has provided all responsive records and information to the Applicant with appropriate severing. I therefore issue no recommendation as a result of this review.

[19] Although I have made no recommendations, under the 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 the final decision of the Department with respect to this Report.

[20] Also, I hereby notify the Applicant, in accordance with section 49(2) of the *ATIPPA*, that he has a right to appeal the decision of the Department 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 Department under paragraph 19 of this Report, above.

[21] 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