



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2011-004

March 31, 2011

### Royal Newfoundland Constabulary

**Summary:**

The Applicant applied to the Royal Newfoundland Constabulary (“RNC”) for access to certain records. The RNC responded by saying that the requested records do not exist. The Applicant asked the Commissioner to review the RNC’s decision. The Applicant presented evidence which she believed pointed to the existence of the records. The Commissioner accepted that the RNC had conducted a reasonable search for responsive records therefore meeting its duty to assist the Applicant. The Commissioner concluded that there was no evidence that the RNC was withholding records responsive to the Applicant’s request. As a result, no recommendation was issued by the Commissioner in this Review.

**Statutes Cited:**

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

**Authorities Cited:**

Newfoundland and Labrador OIPC Reports 2006-009 and A-2009-011; Alberta OIPC Order F2004-020.

## I BACKGROUND

- [1] On September 15, 2010, the Royal Newfoundland Constabulary (“RNC”) received a request under the *Access to Information and Protection of Privacy Act* (the “ATIPPA”) from the Applicant seeking disclosure of the following records:

*Information is put there, or with Head people at the RNC pralby [sic] [the Chief of Police] the Sergeants Superintendents Inspectors It came from [a Sergeant] at [ a certain RCMP Detachment] from [a physician] with the help of [an individual] who worked with the RNC...”.*

- [2] On September 25, 2010, the RNC responded to the Applicant’s request, advising the Applicant that “...the RNC has searched its records and have determined that no records exist...”.

- [3] On November 23, 2010 this Office received a letter from the Applicant in which she referred to a number of matters, many of which this Office has no authority to deal with. She did however indicate in this letter that she had asked the RNC to provide her with information and that she had received a reply saying they had no information to provide. The Applicant explained that she had attended at the front desk of the RNC headquarters on April 12, 2010 and again on May 31, 2010 and on both occasions spoke with a police officer in private regarding her various concerns. The Applicant indicated that information relating to these visits should be at the RNC. She also stated that the RNC had advised her that she could contact this office for a review of the RNC decision.

- [4] In a letter dated November 25, 2010, this Office advised the Applicant that before we could proceed with a review of the RNC’s decision we required documentation from her formally asking us to conduct a review. A form was enclosed with the letter for the Applicant to complete if she wished this Office to commence a review.

- [5] On December 9, 2010, a Request for Review was received at this Office from the Applicant as follows:

*There is information with the RNC about me, and my family but for now, I’m requesting it for myself only. Pluss [sic] I requested any information is there about me and the information I explained on my last letter to [the Commissioner].*

- [6] Although the Request for Review was received outside the 60 days of the Applicant being notified of the RNC's decision, in light of the fact the Applicant first contacted this Office by letter dated November 20, 2010 (which was within the 60 day period) and this Office then sent a letter to the Applicant asking her to complete the Request for Review form which she did, this Office accepted the Request for Review pursuant to subsection 45(1) (c) of the *ATIPPA*.
- [7] During the informal resolution process, the RNC provided this Office with a written report identifying how the RNC searched its records in relation to the Applicant's request. The RNC later agreed to provide a record to this Office which was identified during the RNC's search but, upon the RNC's review, was determined to not pertain to the Applicant's request. Upon our review, this Office also concluded that the identified record did not pertain to the Applicant.
- [8] Attempts to resolve this Request for Review by informal means were not successful and by letters dated January 25, 2011 both the Applicant and the RNC 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 PUBLIC BODY'S SUBMISSION

- [9] The RNC provided my Office with a written submission dated February 11, 2011. In that submission the RNC provided a detailed explanation as to why a record would not exist or not have been created for the Applicant's visits to the RNC on April 12, 2010 and May 31, 2010. The RNC explained that it is not their practice to identify and record the personal information of every person who speaks to a police officer at the front desk area as numerous people pass through this area everyday with inquiries regarding a vast number of issues. The RNC stated:

*If [the Applicant] spoke to a police officer at the front desk area and it was determined that no criminal offense had occurred, then it follows that no criminal investigation would have been initiated. As a result, no personal information would have been obtained and a police file number would not have been generated for the general inquiry.*

[10] In a telephone conversation with an investigator from this Office, the RNC confirmed that this practice also applies to situations where an individual attends at the front desk area and asks to speak to a police officer in private. The RNC clarified that a record is created when a police officer determines that a criminal offence has occurred which requires investigation.

[11] The RNC also indicated that it had no further information to provide other than the information currently on file with this Office (which included the written explanation of the search the RNC undertook for records relating to the Applicant).

### III APPLICANT'S SUBMISSION

[12] The Applicant's written submission was received in this Office on February 3, 2011. In that submission, the Applicant provided details of her two visits to RNC headquarters. She also described numerous events and incidents which she feels supports her allegations that the RNC and other numerous individuals working for the RNC are conducting surveillance on her in an effort to "cover up" information in the possession of certain individuals at the RNC.

### IV DISCUSSION

[13] In this Review, the Applicant has asked this Office to examine the RNC's response to her which stated that no responsive records exist. This raises the issue of whether the RNC has fulfilled its duty to assist the Applicant, which is set out in section 9 of the *ATIPPA*:

*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.*

[14] The duty to assist has been discussed in a number of reports from this Office. In Report A-2009-011, I outlined its three components as follows:

*[80] ...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.*

[15] Also in Report A-2009-011, I discussed the measurement to be used when determining if a public body has met its duty to assist:

*[79] . . . the standard against which the duty to assist is measured is reasonableness, not perfection. I would also observe that while the overall burden of proving that the duty to assist has been fulfilled rests with the public body, it may be that on any specific issue, the burden of proof of a particular proposition may rest with the party that is asserting it.*

[16] In this Request for Review, the Applicant has asserted that the RNC is withholding records from her. In Report 2006-009, my predecessor discussed the onus on an applicant when asserting that a public body is refusing to acknowledge the existence of responsive records or refusing to conduct a reasonable search:

*[17] In this case, the Department is asserting that the record being sought simply does not exist. It is important to note that when an Applicant, in a Request for Review, takes the position that a public body is intentionally withholding a record or has not undertaken an adequate search for a record, there is some onus on the Applicant to present a reasonable basis for that position. As I noted in my Reports 2005-003 and 2006-006, adequacy of search with regard to access to information requests has been dealt with by other jurisdictions in Canada. In Ontario Order M-909, the Inquiry Officer commented that:*

*Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding such records may, in fact, exist.*

...

*[18] I noted in my Report 2005-006 that "the Inquiry Office in Order M-909 also states that record searches 'must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.'" I accept that this was the case in this instance.*

[17] In this case, the RNC has described the search it undertook. The RNC explained that it conducted a search of both its operational records and its intelligence records which are maintained at the Criminal Investigation Division. When the RNC searched for the Applicant's name within the operational records, two files were identified. On the first file, the date of birth was not that of the Applicant. The second file number did not contain a date of birth, therefore, the RNC reviewed the file and determined that it did not relate to the Applicant's request. A further search was conducted within the operational records for all the names identified in the Applicant's request for information to the RNC and again no records were found. Another search for records was conducted within the

Criminal Investigation Division and revealed that no records existed. I accept that the RNC did undertake a reasonable search for the responsive records, and that no records were found.

[18] In coming to this conclusion, I have also carefully considered the arguments put forth by the Applicant. The Applicant is of the opinion that the RNC should have records pertaining to her two visits on April 12, 2010 and May 31, 2010. In my view, the RNC has provided this Office with a satisfactory explanation as to why records would not have been created regarding these two visits.

[19] Furthermore, the Applicant believes that the RNC are in possession of information about her that came from a physician and certain members of a RCMP Detachment in the province. The Applicant also believes that the RNC are conducting surveillance on her in an effort to “cover up” this information, and consequently, they must have information about her.

[20] In a similar case which was the subject of Alberta Order F2004-20, the adjudicator considered evidence presented by the Applicant in support of his assertion that records were being withheld from him by a police service. The Applicant provided written submissions describing events in which he asserted that the police service were stalking him and submitted a photograph of a police car parked on his street as evidence to support his position. At paragraph 19, the adjudicator stated:

*The Applicant has offered clear evidence that a police car was parked on the street near his home. However, even with the events he describes, it is difficult to conclude that the only explanation for the presence of the police car is for the purpose of conducting surveillance or “stalking” the Applicant. There are many other reasonable explanations for the car’s presence.*

[21] At paragraph 22, the adjudicator stated:

*I respect that the Applicant maintains a belief that all of the evidence supports his position that the Public Body must have records containing information about him. However, a strong belief that something is true does not, by itself, make it true. The evidence before me does not cause me to reach the same conclusion regarding the existence of responsive records held by the Public Body. The Applicant has not demonstrated that it is reasonably likely that the Public Body is in custody of responsive records.*

[22] Likewise, I appreciate that the Applicant holds a strong belief that the evidence she has provided supports her argument that the RNC are withholding records from her. However, it is difficult for me to conclude that the only explanation for the presence of police officers or other individuals in the various events the Applicant has described was for the purpose of conducting surveillance on the Applicant. There are many other reasonable explanations for these incidents.

[23] I find that there is no evidence to indicate that the RNC are in possession of information that they are withholding from the Applicant. I note that the RNC cooperated with this Office during the Review. The RNC provided a written report outlining how they conducted the search for records. At our request, the RNC agreed to provide this Office with a copy of the second record identified by the search within the operational records to this Office for our independent review of whether it pertained to the Applicant's request. In addition, at our request, the RNC provided this Office with a detailed explanation of the system that is in place regarding visits to the front desk area of the RNC and why a record would not have been created for the Applicant's two visits to the RNC.

[24] Based on the above, I find that the RNC has met its duty to assist the Applicant. The RNC has conducted a reasonable search for the requested records and has thereby fulfilled the requirement of the second component of the duty to assist. In relation to the first and third components of the duty to assist they were not specifically raised or discussed by either the Applicant or the RNC in their submissions. Consequently, I make no specific finding in relation to the first and third components of the duty to assist. In addition, I find that there was no evidence presented to demonstrate that the RNC is intentionally withholding records responsive to the Applicant's request.

## V CONCLUSION

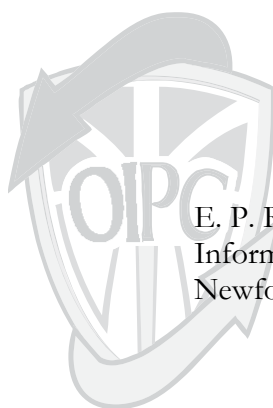
[25] My conclusions are as follows:

- (1) The RNC has conducted a reasonable search for the records responsive to the Applicant's access request and has thereby met the duty to assist imposed on it by section 9 of the *ATIPPA*.

- (2) There is no evidence that the RNC is intentionally withholding records responsive to the Applicant's access request.

[26] Having found that the RNC acted appropriately, it is not necessary for me to make a recommendation. Although I have not made a recommendation in this Report, under authority of section 50 of the ATIPPA I direct the head of the RNC to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the final decision of the RNC with respect to this Report. Please note that within 30 days of receiving a decision of the RNC 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 31<sup>st</sup> day of March 2011.



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