



Royal Newfoundland Constabulary

Access to Information and Protection of Privacy

Statutory Review 2020

November 27, 2020

General Comments

Every year the Royal Newfoundland Constabulary (RNC) processes hundreds of Access to Information and Protection of Privacy (ATIPP) requests for a wide variety of applicants including, but not limited to; members of the general public, legal institutions, insurance companies and media. From the period of April 1, 2015 to November 26, 2020 the Royal Newfoundland has received 736 Access to Information and Protection of Privacy requests. For the period of April 1, 2015 to March 31, 2019 the RNC received 538 of those requested which accounted for approximately 15% of the total number of ATIPP requests received by a public body during that time and 7% of all access to information requests received by a government department or public body. As per the Access to Information and Protection of Privacy website there are over 460 public bodies subject to the *Access to Information and Protection of Privacy Act*. The RNC consistently remains one of the leading public bodies when it comes to the volume of access requests received.

The Royal Newfoundland Constabulary takes access to information and the protection of privacy very seriously within the organization. The RNC is a public body that deals very heavily with the general public so it is no surprise to see large numbers of ATIPP requests being made to the Royal Newfoundland Constabulary. It also need be mentioned the nature of the information and records held by the RNC are usually very sensitive in nature and is sometimes highly sought after information.

Currently the Royal Newfoundland Constabulary has one active ATIPP Coordinator, which is a secondary duty to their full time position within the RNC, as well as an Administrative Assistant whose ATIPP duties are also secondary to their full time RNC position. Both the ATIPP Coordinator and the Administrative Assistant are civilian employees of the organization. The RNC is very fortunate to have three of its previous ATIPP Coordinators still on staff for consults and to provide assistance and backup when needed to the current ATIPP Coordinator. All four ATIPP Coordinators (one active and three previous) provided input during a group discussion as a part of formulating a response to the *Access to Information and Protection of Privacy Act* Statutory Review 2020.

The following are areas of concern identified by the RNC and where applicable the RNC has provided possible recommendations that may lessen the concerns identified.

Areas of Concern and Recommendations

1. Concerns Around Screening Criteria of ATIPP Applicants

As previously mentioned the RNC holds very sensitive information as part of its routine operations. This information can include various types of complaints, police investigation records, court information, and policies that are vital in carrying out the work of the Royal Newfoundland Constabulary but, could be considered harmful to law enforcement procedures if the information is not properly protected, and so much more.

An immediate concern within the RNC is the receipt of applications inquiring for personal information. Often times for any number of reasons the Royal Newfoundland Constabulary will receive requests for police files in which the applicant is indexed within the record.

Unfortunately, as the current application process exists there is often no secure way to confirm the identity of the person requesting the information. The application form does not require a signature from the applicant or the submission of any form of identification. Therefore, the RNC has to rely on information on the request form (ie: a phone number or address) to the information in the sought after records. This is extremely concerning through a protection of privacy lens and depending on the nature of the information being requested. It is not impossible to submit a request and know enough information about another person to access their personal information.

Recommendation:

- a. The RNC recommends that the ATIPP application process be updated to better screen applicants for personal information requests as a safeguard to ensure that the information being sought is being released to the appropriate person(s).*

2. Timeline Extensions

The RNC works diligently to process Access to Information and Protection of Privacy requests in a timely manner. The *Access to Information and Protection of Privacy Act, 2015 (the Act)* requires that a public body provide an advisory response within 10 business days and a final response within 20 business days of receiving an access to information request. In almost all circumstances the RNC has been able to meet these deadlines, with many final responses provided before the advisory response date. However, occasionally the nature of an access to information request can be a lot more involved and take a considerable amount of time. Section 23 of the *Act* allows the head of a public body, no later than 15 business days after receiving a request to apply to the Office of the Information and Privacy Commissioner (OIPC) to extend the time for responding to the request. While this is generally sufficient timelines for RNC purposes and extensions are rarely needed there have been incidents where the need for an extension has occurred subsequent to business day 15. There are numerous factors at the RNC that can sometimes cause delays in ATIPP request processing. These include, but are not limited to, scheduling meetings with other key employees of the RNC when it comes to obtaining information responsive to a request, identifying large numbers of additional records responsive to the request after the extension request deadline, and high volumes of consultations required related to a request. Unfortunately processing an ATIPP request is not limited to the ATIPP Coordinator simply obtaining the records on their own and reviewing them for the exceptions to disclosure and releasing the information. There are a number of steps and key people involved in processing certain types of requests. In instances such as the ones listed the processing time can sometimes act in a negative way in processing a request and it is sometimes not known until very near the deadline if the timeline can be met or not.

Recommendation:

- a. *The RNC recommends that ATIPPA, 2015 be updated to better allow for the extension of response times only where unique and justified circumstances exist after business day 15.*

3. Insufficient Resources for ATIPP Processing

As previously mentioned the RNC processes a large number of requests. In fact the RNC accounts for 15% of all public body access requests received. Currently the RNC has one ATIPP Coordinator and an Administrative Assistant. Both of these employees currently hold other full time positions within the public body. The RNC also maintains a previous ATIPP Coordinator as an alternate or backup to the existing coordinator. The current ATIPP Coordinator for the Royal Newfoundland Constabulary makes it an appoint to prioritize ATIPP requests before their other duties in order to maintain effective time management for ATIPP. As per ATIPP legislation ATIPP requests are time sensitive and “you never know how many or the nature of any additional requests that are coming at any given time”. There is a real opportunity to create an unmanageable backlog given the number of requests the RNC process if not reacted to as soon as received.

There are a number of factors that contribute to this concern as it is believed that ATIPP is not always properly used by applicants. This can include, but not limited to, RNC staff suggesting to persons looking for information to submit an ATIPP request to obtain the sought after information, applicants submitting multiple requests at once at no cost to the applicant, updates to other legislations creating shorter time periods to serve a person(s) (*Automobile Insurance Act*) and, delays in other Government Departments causing the information not to be obtainable through the normal process. Section 3(3) of the *Act* indicates that the *Act* is not meant to replace other procedures for access to information. The Royal Newfoundland Constabulary has devoted a section of their website to identify proper channels to obtain what are often routine information requests to the organization. This is not always followed by the organization or the applicant. Therefore the RNC has to use its own funds and existing resources to meet ATIPP requirements and other crucial work of the RNC becomes a secondary focus and often delayed for significant amounts of time.

4. Reasons Why a Person/Organization Wishes to Obtain the Information

The nature of the information held by the Royal Newfoundland Constabulary is often very sensitive in nature, but can also be very important for applicants for any number of reasons. When an applicant submits a request the reason the information is sought is often not known, nor is it allowed to be asked. A classic example of this is the large number of requests the RNC receives for police reports. As an example ATIPP requests are often received for police reports for insurance purposes, while in many cases the information that is being sought is the Vehicle Collision Report (VCR) which is obtainable routinely through the Motor Registration Division of the Department of Digital Government and Service Newfoundland and Labrador. Similar requests may be received where a file might involve a death and section 7(2) of *ATIPPA*, 2015 are used along with section 24(1) of the *Fatalities Act* which indicates that reports where a death occurs are only to be released by the Chief Medical Examiner. In both cases the information that is necessary is obtainable through another routine source, however without the ATIPP Coordinator knowing the purpose of the sought after information they must follow the ATIPP process and review the relevant information and determine the type of suitable response. In many cases the information is refused under *ATIPPA*, 2015 and the applicants are referred to another avenue to receive the information. It is felt that a large amount of time is sometimes wasted for both the applicant and the public body processing a request only to have to send the applicant on another route to obtain the necessary information.

Recommendation:

- a. *The RNC recommends that ATIPPA, 2015 be updated to better allow for knowing the reasons why information may be sought, at the discretion of the applicant, to allow better and more effective assistance to the applicant.*

5. Clearer Definitions of Custody and Control of Documents

Information often flows between public bodies on a routine basis in order to accomplish work related to the respective public bodies. Sometimes information is gathered and generated as a joint effort between two public bodies. When ATIPP requests are made the request should be made to either the public body that has custody and control of the documents or transferred to the

appropriate body that has that custody and control. However, occasionally it is not always clear who is in custody and control of the responsive records. Section 1.4.1 of the Access to Information Policy and Procedures Manual provides a definition of both custody and control as well as a list of factors to consider when attempting to determine if a public body has custody and/or control of a record. While this information is helpful situations have arisen where it was still not clear once all factors have been considered into which public body clearly has the right over the release of responsive documents. An incorrect assumption of custody and control could result in information being released inaccurately or inappropriately.

Recommendation:

- a. *The RNC recommends that ATIPPA, 2015 be updated to better define and determine accurate custody and control of responsive records and to include a clear and definitive decision process when custody and/or control of a record remains unclear.*

6. Requirement to Consult with Other Departments when Documents Originate from that Department

The exchange of information between departments and other public bodies occurs on a regular basis for any number of reasons in order to complete the work that each entity is set out to do. Occasionally another public body may receive an ATIPP request and the department may have records responsive to the request that originated from another department. The public body that the information originated from would be the most knowledgeable about the information contained within the records and would be best suited to review the relevant information.

Currently the concept of consultations with another department or public body is considered a professional courtesy and not a requirement of the ATIPP process. When public bodies don't consult each other a real risk exists that information may be released that should not be.

Examples of this relevant to the RNC would be the premature release of information which could jeopardize any upcoming legal proceedings that would be unknown to the public body that received the access request. It should be noted that the RNC is not aware of this or any similar situations occurring but, recognize that this risk does exist.

Recommendation:

- a. *The RNC recommends that ATIPPA, 2015 be updated to include a section that outlines the requirement to consult with applicable government departments and public bodies to ensure the release of accurate and complete information and to ensure that all possible exceptions to disclosure are considered that may not be considered by the public body that received the request.*

7. Ability to Refuse Inaccurate Information

The RNC works hard to ensure that all of its information is accurate and complete when completing records and compiling reports. However, on occasion it may be observed that information may not reflect actual circumstances. When releasing information it is very important that the information that is released is accurate and complete to avoid creating false narratives and misconceptions about the work of a public body. Currently section 29(1)(b) of the *Act* allows for the refusal of incomplete information.

Recommendation:

- a. *The RNC recommends that ATIPPA, 2015 be updated to include an exception to disclosure that allows for the refusal of the release of information that is proven to be inaccurate. Additions to the section can be made to ensure that the information is corrected at the time of the request.*

8. Inconsistency with ATIPPA, 2015 and Policy and Procedures Manual

The Access to Information and the Protection of Privacy Policy and Procedures Manual is a great tool to help employees of a public body and ATIPP coordinators alike to navigate ATIPP processes. However it is noted that the Policy and Procedures Manuals sometimes suggests steps that aren't legislated in *ATIPPA*. An example of this would include the use of acknowledgement letters. This can sometimes create confusion for the general public and ATIPP Coordinators alike when not all follow the exact same process. While some coordinators may engage in some of the recommended steps for ATIPP processing others may not which creates inconsistencies for those who submit ATIPP requests.

Recommendation:

- a. *It is recommended that the Policy and Procedures Manuals accompany the legislations clearly and concisely outline the required processes when apply ATIPPA.*

9. The Roles of the Office of the Information and Privacy Commissioner during an Investigation and Timelines

The Office of the Information and Privacy Commissioner (OIPC) is vital to the administration of the *Access to Information and Protection of Privacy Act* and helps to hold public bodies accountable and is an essential part of ensuring the transparency of the Government of Newfoundland and Labrador along with other public bodies throughout the province. However, it is felt by the RNC that *ATIPPA*, 2015 does not hold the OIPC accountable to the general public or public bodies the same way that it holds the aforementioned accountable. Throughout the administering of an access request and a potential applicant complaint to a response the public body is held to strict timelines in responding to the applicant and to the OIPC during the course of their investigation. The applicant too is limited to a 15 business day timeframe to make a complaint regarding an access request. However, there does not seem to be any requirements on timelines within the *Act* for the OIPC to respond or to conduct their investigations. Currently the RNC is aware of one investigation involving the RNC ongoing by the OIPC that has been ongoing since 2017.

Additionally, while the *Act* gives specific authority to the OIPC to conduct their very important work it is felt that the *Act* also excuses the OIPC from engaging in certain roles. Section 99(2) indicates that the OIPC is not required to give evidence in court or a proceeding about information that comes to the knowledge of the commissioner in performing their duties or exercising their powers under *ATIPPA*. Occasionally, issues under the *Act* that are investigated by the OIPC may also lead to a legal proceeding. Section 99(2) clearly excludes the OIPC from having to be involved in any form of legal proceeding that could arise from a potential privacy issue. It is believed by the RNC that the OIPC should have a bigger and more active involvement in investigations related to privacy on every level.

Recommendation:

- a. *It is recommended that additions be made to the Act to ensure that the OIPC is held accountable for their work and requirements put in place to ensure effective and timely communication regarding their investigations, including status updates of the investigation, be made to both the affected individuals and public bodies.*
- b. *It is recommended that section 99 in its entirety be updated to allow the OIPC to actively be involved in other forms of investigations and proceedings outside of their own.*

10. Important Key Royal Newfoundland Constabulary Exclusions (Section 5) to ATIPPA, 2015

As previously stated multiple times, the RNC receives numerous requests under ATIPPA annually. Many of these requests come from the general public or legal representation looking to obtain police reports. Often times police reports contain sensitive information about multiple parties and are often the result of complaints being sent to the RNC. Section 5(1)(l-m) are specific to the files within the RNC and include files where (l) an investigation is not completed, (k) the record may reveal a source of confidential information, or (m) where there is a suspicion of guilt of an identified individual, but no charge was ever laid. All of these exclusions are key to the nature of operations at the RNC. In particular section 5(1)(m) relates to records where there is a suspicion of guilt of an identified person. In theory all police files or related records have a suspicion of guilt where there is a complainant of a crime involving the *Criminal Code of Canada* or violation of another act regardless if a suspect is identified within the record. What is unique about these records is that a file may be reopened at any time as more information becomes available even when a file has been concluded within our system. For this reason it is never known if a suspect will be identified in the future. Currently information may be releasable under ATIPPA that could jeopardize a future RNC investigation or legal proceeding if information becomes available at a later date that identifies a person(s). For these reasons it is felt that some changes could be made to section 5(1)(l-m) to better protect the sensitivity of RNC records.

Recommendation:

- a. *It is felt that the wording of section 5(1)(l-m) should be updated to read “Law Enforcement Agency” instead of “Royal Newfoundland Constabulary” to better protect all records within an public body or other law enforcement agency within the province of Newfoundland and Labrador of this nature.*
- b. *Section 5(1)(m) should be updated to include any record where a suspicion of guilt is present regardless if a suspected guilty person(s) are identified at the time of an Access to Information request to protect the information that could eventually lead to and jeopardize a legal proceeding.*

11. Burden of Proof and Disclosure Harmful to Individual or Public Safety

As noted in our mission statement the role of the RNC is “...to build safe and healthy communities.”. Section 37 of *ATIPPA* generally indicates that a public body may refuse to disclose records that could reasonably be expected to cause any type of safety or physical/mental health of a person whether it be the applicant or another person as well as could reasonably threaten public safety. On a very regular basis the RNC deals with various types of information and files including, but not limited to, assaults, sexual assaults, uttered threats, homicides, mental health calls and so much more. Often times information contained within these records are very sensitive and if released could arguably trigger any number of issues for individuals involved in the records including, but not limited to, aggression of an involved party resulting in actions taken by that party, embarrassment, post-traumatic stress, anxiety, or depression which could have lasting and severe consequences. While the provisions are within the *Act* to withhold this type of information a burden of proof exists and is open to interpretation. It is felt by the RNC that reactions of involved parties are oftentimes unpredictable and proof that a negative reaction may occur is not always possible.

Recommendation:

- a. *In an effort to protect all citizens under jurisdiction it is recommended by the RNC that ATIPPA legislation be updated to allow the refusal of information that “could” be expected to cause any harm to one’s physical or mental health as well as a*

potential risk to anyone's safety. It is noted that an expectation of this result would still need to exist and a certain level of assurance still met.

12. ATIPPA, 2015 – “Schedule A”

While the *Access to Information and Protection of Privacy Act* is a key part to both transparency and privacy protection additional acts outlined in “Schedule A” of the *Act* supersede ATIPPA legislation. The most common act in “Schedule A” referenced by the RNC when responding to ATIPPA requests is section 174 of the *Highway Traffic Act (HTA)*. As previously mentioned a significant portion of access requests received by the RNC are from those involved in motor vehicle incidents and from their respective insurance and legal representations. Section 174 of the *HTA* have played a key role in responding to those types of requests. Additionally, the RNC has relied multiple times on the *Fatalities Act* in responding to access requests for records in relation to a death which was investigated by the Royal Newfoundland Constabulary.

The inclusion of additional pieces of legislation is important and supported by the RNC. The RNC also believes that sections 10-17 of the *Royal Newfoundland Constabulary Regulations* (the ‘*Regulations*’) would have some value in being referenced in “Schedule A” of the *Act*. These sections of the *Regulations* set out disciplinary offences for RNC officers and the procedure for disciplinary proceedings which are unique regulatory proceedings. It is important to note that police officers are held to a higher standard of conduct while performing their duties and accountability of officers for misconducts is an important aspect of maintaining public confidence in the police and officer confidence in the fairness of disciplinary proceedings. The inclusion of Sections 10-17 of the *Regulations* in “Schedule A” of ATIPPA will serve to clarify and illustrate the fact that these proceedings are subject to the open court principle in accordance with their characterization as offences in Section s.7(3) of the *Regulations*, which are therefore governed by the *Provincial Offences Act*. The fact that RNC disciplinary matters are characterized as offences within the *Regulations* and are subject to the open court principle makes them distinct from other workplace investigations which are subject to Section 33 of *ATIPPA*.

The Supreme Court of Canada strongly affirmed the importance of the open court principle and the fact that, when applicable, it should not be displaced lightly in the case of Re: Vancouver Sun

2004 S.C.C. 43 at paragraphs 22-31. At paragraphs 25 and 26 of the Re: Vancouver Sun (supra.) case, the Supreme Court states as follows:

Public access to the courts guarantees the integrity of the judicial processes by demonstrating “that justice is administered in a non-arbitrary manner according to the rule of law”: Canadian Broadcasting Corp. v. New Brunswick (Attorney General) supra., at para. 22. Openness is necessary to maintain the independence and impartiality of courts. It is integral to public confidence in the justice system and the public’s understanding of the administration of justice. Moreover, openness is a principal component of the legitimacy of the judicial process and why the parties and public at large abide by the decisions of the court.

The open court principle is inextricably linked to the freedom of expression protected by s. 2(b) of the Charter and advances the core values therein: Canadian Broadcasting Corp. v. New Brunswick (Attorney General) supra. At para. 17. The freedom of the press to report on judicial proceedings is a core value. Equally, the right of the public to receive information is also protected by the constitutional guarantee of freedom of expression: Ford c. Quebec (Procureur general) [1988] 2 S.C.R. 712 (S.C.C.): Edmonton Journal, supra. at pp 1339-40. The press plays a vital role in being the conduit through which the public receives that information regarding the operation of public institutions: Edmonton Journal: supra. at pp 1339-40. Consequently, the open court principle, to put it mildly, is not to be lightly interfered with.

The RNC believes that the application of the open court principle in practice within the context of RNC internal disciplinary proceedings is lawful and consistent with the protection of core Charter values. The application of the open court principle within internal disciplinary proceedings serves to enhance the status of policing as a self-governing profession and greatly improve public and officer confidence in and understanding of the RNC internal disciplinary process. The inclusion of Sections 10-17 of the *Regulations* in ‘Schedule A’ will facilitate transparency in the RNC disciplinary process by clearly distinguishing the unique nature of these disciplinary proceedings as compared to other workplace investigations which is clearly in the public interest and in the interest of the RNC as a police service.

Recommendation:

- a. *It is also recommended that section 173, 174, & 174.1 of the Highway Traffic Act as well as subsection 24(1) of the Fatalities Act be maintained in “Schedule A” of ATIPP legislation.*
- b. *To better promote transparency of the RNC it is recommended that Sections 10-17 inclusive of the Royal Newfoundland Constabulary Regulations be added to “Schedule A” of the Access to Information and Privacy Act.*

13. Updating of Cost Schedule for Access Requests

Currently an access request for information can be made for free until the first 10 hours of locating a record for a local government body and the first 15 hours for another public body. As previously mentioned the RNC provides their own personnel to administer access to information requests. The RNC also indirectly provides their own funds for administering the *Act*. This could include multiple employees involved in a single request at once. While a cost schedule does exist it is not currently used within the RNC simply as the cost schedule and monitoring of time spent responding to a request would result in an added strain to the resources already supplied by the RNC for ATIPP purposes. Other resources provided by the public body, in this case the RNC, include but are not limited to, use of information technology equipment, printing resources, office supplies and more. Essentially an ATIPP request starts to draw down on a public body’s resources immediately after an ATIPP request is received. Many ATIPP requests received by the RNC are completed in less time than is outlined in the cost schedule to be able to implement modest fees for an ATIPP requests.

Additionally other government records that are routinely accessible through other processes such as Certificate of Conducts and Vehicle Collision Reports are only obtainable from the appropriate government department once a fee is paid up front regardless of time needed to prepare the information. Additionally, since most RNC ATIPP responses do not result in a fee, due to the low amount of time often taken to complete a request, there are no limitations on a person or organization submitting multiple requests.

Recommendation:

a. It is recommended by the RNC that a standard base fee for access requests be implemented in the legislation to help offset the significant strains that are sometimes endured by a public body in administering the Act. Additional costs may be added as seen appropriate by the public body as set out by the Act.

14. Updates to Wording to Particular ATIPPA, 2015 Sections

As with any legislation wording is very important and often open to interpretation to the reader of those administering the act sometimes with the opinions of experts. *The Access to Information and Protection of Privacy Act, 2015* is no different. Through the administration of the *ATIPP Act* the RNC would like to make the following recommendations for wording updates to ATIPP legislation. It should be noted that other wording recommendations were made in some of the previous sections of this report.

Section 2(u)(vii-ix)

The reading of these sections appear to be contradictory of each other. Section vii indicates that the opinions of a person about the individual constitutes personal information while section ix indicates that personal information can also include the individual's personal views or opinions, except where they are about someone else.

Recommendation:

a. It is recommended that these two sections be updated to be clearer for anyone who interprets the legislation.

Concluding Remarks

The *Access to Information and Protection of Privacy Act* is vital to the province of Newfoundland and Labrador. The RNC fully supports its purpose and what it means to the citizens of this province. Feedback directly from those who administer the legislation is an excellent way to find efficient and better ways of achieving the goals of the *Act*.