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**Nunavut Information and Privacy Commissioner**  
**Nunavunmi Tuhaqtauyukhaliqinirmun Kanngunaqtuliqinirmun Kamisina**  
**Commissaire à l'information et à la protection de la vie privée du Nunavut**

## **Special Commissioner's Final Report**

<b>Report Number:</b>	24-278-RR
<b>CanLII Citation:</b>	Department of Justice (Re), 2024 NUIPC 27
<b>NUIPC File Number(s):</b>	24-169
<b>GN File Number(s):</b>	1029-20-2425JUS0543
<b>Date:</b>	December 6, 2024

### **Summary**

**[1]** The applicant unsuccessfully applied for several jobs with the Department of Justice (DOJ) and, wanting information about why, made an access to information request to the DOJ under the *Access to Information and Protection of Privacy Act* (ATIPPA). In response, the DOJ disclosed records in three stages. However, the applicant continued to believe the DOJ was withholding responsive records and appealed to the Office of the Information and Privacy Commissioner. The Special Commissioner determined that the DOJ responded to the applicant's access request openly, accurately and completely. The Special Commissioner found that the evidence did not support the applicant's claim that the DOJ continues to withhold responsive records related to applicant's access request.

### **Nature of Review and Jurisdiction**

**[2]** This is a request for review, made under section 28(1) of ATIPPA, of the DOJ's response to the applicant's June 14, 2024, access to information request to the DOJ.

**[3]** The request, along with a privacy complaint, (dealt with separately in Report 24-279-RR) was received by Nunavut's Information and Privacy Commissioner on July 28, 2024. Upon reviewing the requests, the

Commissioner determined he was in a conflict of interest respecting the matter.

**[4]** The Commissioner notified the applicant and the DOJ of the conflict and in accordance with section 63.1 (1) in ATIPPA, I was appointed a Special Information and Privacy Commissioner on August 15, 2024, to determine the matters under review.

### **Issues**

**[5]** The issue in this review is whether the DOJ made every reasonable effort to assist the applicant by responding to their access to information request openly, accurately and completely.

### **Facts**

**[6]** The applicant applied for several jobs at the DOJ. These efforts were unsuccessful, and the applicant believed this was because of an unfair “blacklisting”. The applicant made a formal request to the DOJ June 14, 2024, to get all the information the DOJ held about the applicant.

**[7]** The DOJ’s disclosed responsive records in stages.

**[8]** The first was on July 2, 2024, when the DOJ released seven pages of records in addition to several email threads concerning the applicant.

**[9]** The applicant replied on the same day, seeking clarification about whether this response was complete and whether other information was being withheld.

**[10]** The DOJ responded on July 3, 2024, that there were no other documents apart from the applicant’s screening information, included in the release package, and no information was being withheld.

**[11]** The applicant replied again, expressing the belief that additional responsive records existed and suggesting that the DOJ check with at least one particular DOJ official.

**[12]** This in turn resulted in the DOJ seeking more time to complete its record search and, on July 11, 2024, it asked the applicant if there was anyone else the applicant may have had contact with among its employees, as that

might aid its search for records. Other than the DOJ official previously identified, the applicant said there was no one else in the department they could identify.

**[13]** On July 15, 2024, the DOJ provided the applicant with a further release of 29 pages of records.

**[14]** The same day the applicant responded that they still believed records were missing. The applicant said these included the criteria used to screen candidates and the results of the selection process. The applicant also noted that records already disclosed referred to “issues that were flagged against me”, including disciplinary proceedings of a provincial law society. The applicant said that “detailed information” about that and other matters was not included in the DOJ disclosures.

**[15]** The DOJ responded on July 16, 2024, that another division of the Nunavut government possessed the screening records and resumes, and that DOJ understood that the other division was assisting the applicant. As to the disciplinary proceedings, the DOJ explained that references to these had been found online by the DOJ on the law society’s website. I note here that whether the DOJ was authorized under ATIPPA to collect and use the information from the law society website is the subject of a separate complaint dealt with in Report 24-279-RR.

**[16]** On July 28, 2024, the applicant asked the Information and Privacy Commissioner to review the DOJ’s response to his access request.

**[17]** After my appointment, the DOJ disclosed four additional records related to one of the job positions applied for by the applicant. This included a listing of other candidates for the position. The names of those candidates were redacted to protect their privacy. I do not understand the applicant to be challenging these redactions.

**[18]** The applicant submits that, even with subsequent releases of information, the DOJ continues to withhold relevant information without providing a justifiable basis.

## **Law**

**[19]** Section 7(1) of ATIPPA requires a public body to “make every reasonable effort” to assist an applicant by responding “openly, accurately

and completely” to an access request. A former Information and Privacy Commissioner of British Columbia, referring to the identical provision in the comparable British Columbia legislation, helpfully described a public body’s duty to search for records in this way, in *College of Pharmacists of British Columbia, Re*, 2002 CanLII 42428 (BC IPC) at paragraph 14:

Although the Act does not impose a standard of perfection, it is well established that, in searching for records, a public body must do that which a fair and rational person would expect to be done or consider acceptable. The search must be thorough and comprehensive. The evidence should describe all potential sources of records, identify those searched and identify any sources that were not searched, with reasons for not doing so. The evidence should also indicate how the searches were done and how much time public body staff spent searching for records.

Nunavut’s Information and Privacy Commissioner has taken a similar stance: *Department of Health (Re)*, 2021 NUIPC 20 (CanLII) at paragraphs 12 to 15; *Department of Education (Re)*, 2021 NUIPC 10 (CanLII) at paragraphs 24 to 27; *Department of Education (Re)*, 2021 NUIPC 22 (CanLII); *Nunavut Housing Corporation (Re)*, 2021 NUIPC 26 (CanLII).

## **Analysis**

**[20]** The applicant believes that responsive records still exist but they are being withheld. This is a serious charge because a public body has a legal responsibility to release all records relevant to an access request, subject to any exceptions to disclosure under ATIPPA.

**[21]** It is clear the applicant’s belief that the DOJ has withheld records is linked to a strongly held belief that they have been unfairly denied employment opportunities at the DOJ.

**[22]** However, my authority does not extend to addressing the applicant’s concerns about hiring practices.

**[23]** The applicant’s belief that the DOJ has withheld records is apparently reinforced by the DOJ’s release of records in three separate stages. The applicant correctly observes that the DOJ’s first and second releases of records each were followed by the DOJ’s claims that no other records existed. This is no doubt why the applicant said after the second disclosure package

“it showed that they had information about me that was improperly withheld”.<sup>1</sup>

**[24]** The fact that further records are disclosed after a public body’s initial, or even subsequent, release of records does not mean the further records were initially “withheld” much less “improperly withheld”. They may well have been overlooked or misidentified in the initial or later search stages. Ideally, public bodies would locate and disclose all relevant records at first instance. Sometimes this does not happen and that is not necessarily because of improper behaviour. Additional records may be found in the course of the access process, during back-and-forth exchanges between an applicant and a public body. This may especially be so in cases like this, where the applicant can point the public body to specific people or areas where records might be found. When this happens, it is incumbent on the public body to follow-up thoroughly and promptly. My review of the DOJ’s record search indicates they did so here. Indeed, these follow-ups resulted in further records being found and disclosed. This is not to suggest that public bodies need not conduct the kind of “thorough and comprehensive” search for records that ATIPPA requires, but it is true that public bodies may not discover all relevant records during the first or even later searches.

**[25]** This said, the DOJ’s staged release of records that were clearly responsive to the terms of the applicant’s request prompted me to ask for a detailed record of the DOJ’s search process.

**[26]** The DOJ response confirms that record search declaration forms were sent to its Human Resources, Policy and Planning and Legal Divisions. These declarations require employees to declare that they have undertaken complete searches in response to a request, thus helping to hold them to account for doing so. Relevant files and email accounts of individuals who may have had any interaction with the applicant were searched using the applicant’s name, as well as using terms the applicant had provided in the access request. This yielded several records, which were released to the applicant.

**[27]** As noted above, DOJ asked the applicant to identify anyone the applicant believed would possess relevant records. This resulted in the DOJ

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<sup>1</sup> Applicant submission July 30, 2024, p. 2 para. 4.

asking an individual named by the applicant for responsive records. That individual produced several records, which were also released to the applicant.

**[28]** It was also apparent to the DOJ that other responsive records might be in the control of Nunavut's Department of Human Resources. However, the DOJ did not transfer the applicant's request to that Ministry because the applicant had already been in touch with it. The applicant's July 16, 2024, email to the DOJ confirmed the applicant had been in touch with HR but the focus of their request was the DOJ.

**[29]** The applicant points to several kinds of records the applicant believes are being withheld. I have carefully considered each kind and conclude they are speculative at best. None lead to a conclusion that information exists that is being withheld.

**[30]** While I have considered each of the applicant's points on this issue, I will not discuss all of them: it suffices to cite three examples of records that the applicant believes are being withheld.

**[31]** The applicant says information relating to the composition of at least one of the job selection committees is missing.<sup>2</sup> However, the applicant's August 28, 2024, submission indicates that, based on records already disclosed by the DOJ, the applicant was able determine the identity of selection committee members and they are named in the submission.<sup>3</sup>

**[32]** Another category of records the applicant believes to be missing concerns the DOJ's employment screening criteria. I observe that the third of the DOJ's disclosures includes records describing the screening criteria and how they applied to the applicant in the case of at least one employment position.

**[33]** Finally, the applicant says that records are missing that might explain the basis for the applicant being screened in or out of job opportunities.<sup>4</sup> To the contrary, I note that an email, contained in the DOJ's July 2, 2024, disclosure package<sup>5</sup> states clearly the DOJ was not prepared to hire the

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<sup>2</sup> Applicant submission, July 30, 2024, attachment 9, p.4.

<sup>3</sup> Applicant submission, August 28,2024, Tab 1 p. 10.

<sup>4</sup> Applicant submission, July 30,2024, attachment 9, p. 4.

<sup>5</sup> DOJ Record disclosure to applicant, July 2, 2024, pages 12 and 13.

applicant after learning of disciplinary actions taken against them by a provincial law society.

**Conclusion**

[34] In conclusion, I find that the DOJ made every reasonable effort to assist the applicant by responding openly, accurately and completely to their access request. Moreover, I find the evidence does not support the applicant’s submissions that the DOJ is improperly withholding records that are responsive to the applicant’s access request.

“Original signed”

Michael McEvoy  
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