

Office of the  
**INTEGRITY**  
COMMISSIONER



Bureau du  
**COMMISSAIRE**  
**À L'INTÉGRITÉ**

## REPORT OF FINDINGS

*Right to Information and Protection of Privacy Act*

Matter No: 2018-4332-AP-2356

May 28, 2018

## I BACKGROUND

1. This Report of the Commissioner's Findings is made pursuant to the *Right to Information and Protection of Privacy Act*<sup>1</sup>.
2. On January 3, 2018, the Applicant made a Request to the BNPP Regional Police to obtain access to the following information, during the period of January 1, 2014 to the date of the Request:

All records mentioning problems with BNPP regional police's exhibit system, missing or lost exhibits, tampered/unusable exhibits or instances where seized alcohol wasn't destroyed. Please also include any records on an outside audit of the police force's exhibit system, ordered by the Department of Justice and Public Safety.

3. The BNPP Regional Police's January 23, 2018 Response stated "In regards to your request for information received on 2018-01-11 concerning audit of our police force exhibit system by the Department of Justice and Public Safety, I was advised to refer all such demand to the Department of Public Safety."
4. Not satisfied with the Response, the Applicant filed a complaint with our Office on the fact that the BNPP Regional Police decided to transfer her Request to the Department of Justice and Public Safety instead of processing and responding to the Request.
5. Pursuant to s. 68(1) of the *Act*, the Office of the Integrity Commissioner conducted an investigation into this complaint matter.

## II INVESTIGATION

6. During investigations of these types of complaints, we do not review the requested information in order to determine the Applicant's access rights; rather, we communicate with the public body subject to the complaint in order to determine whether it was authorized, under the *Act*, to transfer the request, or whether it ought to have responded to it.
7. As such, in this matter, we had to determine whether the BNPP Regional Police was authorized to transfer the Request to the Department of Justice and Public Safety, and to do so, we first had to determine whether the Department of Justice and Public Safety had in its custody or

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<sup>1</sup> S.N.B., c. R-10.6 (the "Act")

control all of the requested information in order to adequately respond to the Request upon receiving it.

8. To make this determination, we communicated with the Chief of the Police of the BNPP Regional Police, and by asking the BNPP Regional Police whether it had transferred the entire Request to the Department of Justice and Public Safety or only the second part relating to the audit. The Chief of Police of the BNPP Regional responded that it transferred the entire Request as the Department is responsible for conducting the audits, and therefore, the Chief believed it would have the entire records relevant to the Request.
9. The Chief of Police informed us that, prior to being audited, the Department of Justice and Public Safety sends the police forces an audit guide with instructions as to which records and information to gather and to send them to the Department. Upon receipt, the Department's auditors review the information and then attend onsite to conduct the audit. Once completed, the Department then sends a copy of its report to the police force in question. BNPP. This is what took place in regards to the audit made at the BNPP Regional Police.
10. For these reasons, the Chief of Police believed these records now belonged to the Department of Justice and Public Safety, which is why he transferred the Request to the Department, as it would have been able to properly respond to the entire Request given that it has all the records pertaining to the audit on its exhibit system.
11. Furthermore, the Chief of Police of the BNPP Regional Police explained that, while there were audits conducted by the Department of Justice and Public Safety in 2014 and 2015, the audits did not pertain to the BNPP Regional Police's exhibit system. In 2013, the audit touched upon the fact that seized alcohol may not have been properly destroyed; however, according to the Chief, the issue was that the documents to attest to the destruction of the alcohol were missing a second signature. According to the BNPP, this was addressed by a policy and no records were generated regarding this matter. As such, the BNPP explained it has no additional responsive records.
12. Senior Legal Counsel then asked whether the BNPP Regional Police would have generated any information regarding its exhibit system after receiving the Department's 2016 audit report, especially if it contained any recommendations. The Chief of Police stated that any information generated internally regarding the exhibit system could not be shared for security reasons.

### III ANALYSIS AND FINDINGS

13. The *Act* authorizes a public body to transfer a request to another public body in certain circumstances, as follows:

13(1) Within 10 days after a public body receives a request for access to a record, the head of the public body may transfer the request to another public body if

- (a) the record was produced by or for the other public body,
- (b) the other public body was the first to obtain the record, or
- (c) the record is in the custody of or under the control of the other public body.

14. In this case, I accept that the BNPP Regional Police was authorized to transfer part of the Request to the Department of Justice and Public Safety, in regards to the audits, as per s. 11(3)(a) of the *Act*, given the fact that the requested audits are prepared by the Department. However, my findings differ with respect to the first part of the Request.

15. While the Applicant indicates in her complaint that she did receive the audit report from the Department of Justice and Public Safety, she does not mention whether she obtained any other records relating to the audits from the Department. In light of this, I am not satisfied that the Applicant received a full and complete response to her Request made to the BNPP Regional Police. That is so because the first part of the Request asks for records that may not be in the custody or control of the Department, but in the custody or control of the BNPP Regional Police.

16. Although the BNPP Regional Police believed that the information it sent to the Department in preparation of the 2016 audit was now in the custody or control of the Department, in my view, the BNPP Regional Police nevertheless retains custody and control of its own records, even though it sent a copy of them to the Department. Therefore, I find that it should have responded to the first part of the Applicant's Request.

17. As a result, I find that the BNPP Regional Police was not authorized to transfer the entire Request to the Department, and therefore, it failed to provide a response to the Applicant regarding the first part of her Request, in accordance with the *Act*.

**IV RECOMMENDATION**

18. In light of the above, I am issuing the following recommendations to the BNPP Regional Police, pursuant to s. 73(1)(a)(iii):
- a) To perform a search of its records to identify any and all relevant information pertaining to the Applicant's Request, being "*all records mentioning problems with BNPP Regional Police's exhibit system, missing or lost exhibits, tampered/unusable exhibits or instances where seized alcohol wasn't destroyed*";
  - b) Issue a response in conformity with ss. 14 and 11(1)(a) of the Act by granting in whole or in part, access to the relevant information, or by refusing to grant, in whole or in part, access to the information:
    - i. because no relevant information exists, and if so, to inform the Applicant that no information exists; or,
    - ii. where the information does exist, of the reasons for the refusal and the specific provision of the Act on which the refusal is based; and,
19. Upon receipt of the Response, the Applicant may file a complaint with our Office or refer the matter to a Court of Queen's Bench if she is not satisfied with the BNPP Regional Police's response.
20. As set out in s. 74(2) of the Act, the BNPP Regional Police is to notify the Applicant of its decision with respect to this recommendation. If the BNPP Regional Police decides to accept the recommendation, s. 74(3) requires the BNPP Regional Police to comply or make the decision it deems appropriate within 15 days of receipt of this Report. If the BNPP Regional Police decides not to accept the recommendation or fails to notify the Applicant of its decision, the Applicant will have right to appeal the matter to the Court of Queen's Bench in accordance with section 75 of the Act.

This Report issued in Fredericton, New Brunswick this \_\_\_\_ day of May 2018.



The Hon. Alexandre Deschênes, Q.C.  
Integrity Commissioner of New Brunswick