# Report of Findings: 21/22-AP-001 and 21/22-AP-026
## *Right to Information and Protection of Privacy Act*
## Mount Allison University

## August 16, 2021

**Summary:** Two applicants made access requests to Mount Allison University in March 2021 that the University deemed were not compliant with s. 8(2)(a) of the *Act* and the University thus refused to accept or process them. The first applicant requested all communications to and from a named University employee over a month-long period. The second applicant requested a number of items over a two-week period, including emails sent to and from four named University employees, voicemails for two specified phone numbers, text messages on cellular phones assigned to two named University employees, as well as the last cellular phone invoices for these same two employees. After receiving these requests, the University engaged with both applicants to seek further details about the records they had requested, particularly the "event" in question. Both applicants declined to provide further specifics as they were of the view that their requests were clear. The University declined to process both requests on the basis that they did not provide sufficient particularity as to time, place and event as required by s. 8(2)(a) of the *Act*. Neither applicant was satisfied with the University's response and both filed separate complaints with this Office.

The Ombud found that the University could not rely on s. 8(2)(a) to refuse to process these requests as both applicants identified the records they were specifically requesting in their access requests as submitted to the University. The Ombud found that s. 8(2)(a) only requires applicants to provide particularities with respect to time, place and event if they are not sure what records would contain the information they are seeking and the purpose of providing such particulars is to enable a person knowledgeable in the subject matter to identify relevant records. The Ombud recommended that the University accept and process both requests in keeping with Part 2 of the *Act*.

**Statutes Considered**: *Right to Information and Protection of Privacy Act*, SNB, c. R-10.6, ss. 8(2)(a), 9.

**Authorities Considered:** *National Defence (Re),* 2020 OIC 4 (CanLII); *Murray v. NB Police Comm.,* 2012 NBQB 154 (CanLII); *Executive Council (Re),* 2009 CanLII 1468 (NL IPC); *Service Alberta (Re),* 2017 CanLII 5843 (AB OIPC).

## I BACKGROUND

1. In March 2021, two applicants submitted separate access requests to Mount Allison University ("the University" under the *Right to Information and Protection of Privacy Act* ("the *Act*").

2. The first applicant made the following request:

> "Any communication, electronic or otherwise, to which [a named University employee] has been a party" between February 6, 2021 and March 10, 2021.

3. The second applicant submitted the following request:

> The following records between 15 February 2021 and 2 March 2021:
> - all emails sent or received from four specified Mount Allison University email accounts;
> - voicemails on two specified telephone numbers;
> - text messages on cellular phones assigned to two named individuals; and
> - the last telephone invoice for any cellular phones issued to these two individuals.

4. In response to both requests, the University acknowledged receipt of the Applicants' respective access requests and requested further particulars from both Applicants about the time, place, and event, which the University was of the view was required to be properly constituted access requests under s. 8(2)(a) of the *Act*. At the time, both Applicants challenged the University asking them to provide such further particulars in order for the University to accept and process their respective requests, but the University maintained its position that without such further particulars, the requests were not compliant with s. 8(2)(a) of the *Act* and thus the University was not obligated to treat them.

5. Both Applicants were dissatisfied with the University's handling of their requests and filed complaints with this Office on April 7, 2021 and June 22, 2021, respectively.

6. During the informal resolution process, this Office and the University were unable to reach an agreement on whether these two access requests fall within the scope of the *Act* with respect to the access request requirements found in s. 8(2)(a) of the *Act*, following which they were remitted to me for review.

7. As the jurisdictional question remains at issue, I decided to conduct a formal investigation of both complaints pursuant to s. 68(3) of the *Act*.

## II ISSUES

8. The sole issue is whether the Applicants' respective access requests are compliant with s. 8(2)(a) of the *Act*. This is a jurisdictional question on whether the *Act* applies to these two requests and whether the University is obligated to accept them as submitted by the Applicants and process them in keeping with the requirements of Part 2 of the *Act*.

## III ANALYSIS

***Position of the parties***

9. In bringing these complaints, the Applicants have both taken the position that their respective access requests provide sufficient detail to enable the University to be able to identify the relevant records and process their requests. Both Applicants expressed frustration with the University's request for further particulars after receipt of their respective requests and did not understand why the University was refusing to accept them as presented.

10. The University's position is that neither of these requests is compliant with the requirements of s. 8(2)(a) of the *Act* as they do not specify a subject matter or particular event, and for this reason, the University is of the view that it is not required to treat these requests.

11. As the burden of proof is on the University to demonstrate that the Applicants have no right of access, and based on my initial review of the complaints as they escalated to the formal investigation process, I was of the view that these are properly constituted requests for the purposes of s. 8(2)(a). I requested that the University reconsider its position or, in the alternative, present written submissions for my review.

12. In reply, the University provided submissions indicating that it was maintaining its position and the reasons why it was of the view it was justified in doing so, and further why it believed that its approach is not only in keeping with the clear wording of s. 8(2)(a), but also the overarching obligation of public bodies to process and respond to access requests in a timely manner.

13. As a starting point, the University maintained that it does not believe that either of the Applicants have specified the record requested and therefore must provide to the University particulars as to time, place and event in accordance with s. 8(2)(a) of the *Act* in order for the University to accept and process their respective access requests. The University submits that the clear wording of s. 8(2)(a) supports its position.

14. As to the question of whether the requests have specified the requested record(s) for the purposes of s. 8(2)(a), the University submitted the following:

> …by seeking everything, the requests do not really identify anything.
>
> It is difficult to envision any request failing to specify "the record" on your interpretation of this section as advanced in your letter. On your interpretation, someone seeking any and all emails to and from any Mount Allison employee would satisfy the first part of s. 8(2)(a)—having specified the record.
>
> Such an interpretation is contrary to the plain and clear wording of s. 8(2)(a) which requires further particularity where "the record" is not identified by an applicant.
>
> We do not believe that an applicant specifies a particular record, within the meaning of the first part of s. 8(2)(a), when the applicant requests all correspondence involving a particular employee, or all emails to a particular email account, etc.
>
> We believe your interpretation defies common sense and is an attempt to stretch the plain wording of s. 8(2)(a) as is evident in the following paragraph from your letter:
>
> > "*I do not find that the second part of s. 8(2)(a) is relevant to the present circumstances,* ***as there is nothing to indicate that the applicants do not know which records might contain the information they are seeking.*** *Only where this is the case does s. 8(2)(a) require an applicant to 'provide a particularity as to time, place and event to enable a person familiar with the subject matter to identify the relevant record."*
>
> On this logic, an applicant seeking, for example, documents with respect to amounts expended by Mount Allison on a particular construction project could request any and all documents from anyone at Mount Allison for a particular timeframe. Since we do not know what is happening in the applicant's mind (i.e., there is nothing to indicate they do not know which records might contain the information they are seeking) they would not have to provide further particulars.
>
> With respect, we submit that your 10-page letter, including the quote above, unnecessarily complicates this matter.

15. The University also submitted that its approach to these two requests furthers the purposes of the *Act* by ensuring that the access to information process is workable and guards against applicants using the legislation as a fishing expedition that requires public bodies to retrieve and review countless pages of

information that an applicant may actually have little or no interest in. The University stated that it does not see how the purposes of the *Act* are served by providing these applicants with hundreds or thousands of pages that the University submits "have little or nothing to do with what they are actually looking for."

16. As to the amount of work that may be required for the University to process and respond to these requests, the University submitted that "in this case we are dealing with the potential retrieval and review of, in one instance over four thousand emails without regard to subject matter" and that processing could involve several of the mandatory and discretionary exceptions to disclosure and the third party notification process. The University does not see how the purposes of the *Act* would be fulfilled "by reviewing and providing all these emails where an applicant can simply narrow the request to specifying a particular event(s)."

17. Finally, while the University cautioned against relying on precedents from other Canadian jurisdictions, given the differences in the wording of their equivalent positions, it submitted that a recent decision from the federal Information Commissioner[1] supported its position that the present two requests should not be accepted as properly constituted for the purposes of s. 8(2)(a) of the *Act*.

***Section 8(2)(a): Access request requirements***

18. Section 8(2)(a) of the *Act* states:

> 8(2) A request for access to a record shall
>
> (a) specify the record requested or where the record in which the relevant information may be contained is not known to the applicant, provide enough particularity as to time, place and event to enable a person familiar with the subject matter to identify the relevant record…

19. I have reviewed the submissions that the University has provided in support of its position, as well as the specific wording of s. 8(2)(a). I agree with the University that the wording of s. 8(2)(a) is determinative of whether or not an applicant must specify a particular event in making an access request.

20. As a starting point, I note that the wording of s. 8(2)(a) of the *Act* is unique to New Brunswick and no other Canadian jurisdiction's access to information legislation's equivalent provision is exactly the same as ours. That being said, I also note that such provisions are all based on the same premise,

[1] *National Defence (Re),* 2020 OIC 4 (CanLII).

which is that applicants need to provide sufficient detail to enable public bodies to be able to identify the relevant record(s).

21. I also note that this Office has not, to date, published findings on the interpretation and application of s. 8(2)(a), nor am I aware of any New Brunswick court decisions directly on point.

22. During the formal investigation, the University submitted that the New Brunswick courts have commented on the fact that the *Act* is not intended to allow individuals to engage in a fishing expedition, as stated by Justice Clendening in *Murray v. NB Police Commission*[2] at paragraph 15.

23. Paragraph 15 of this decision states:

> [15] The purpose of the *RIPPA* is not to allow an individual to go on a fishing expedition to flesh out the name of a third party. The purpose of the *RIPPA*, set out above, is to allow individuals an opportunity to access public records for necessary information about themselves, but what it is not to be used for is the "unreasonable invasion of a third party's privacy" and that is precisely what Mr. Murray is requesting.

24. In that case, the applicant was a self-represented litigant seeking information from the New Brunswick Police Commission about an investigation lead by the Commission. Specifically, the applicant in that case was seeking to know the identity of persons who may have provided the Fredericton Police Force with information about him. The applicant in that case was challenging the Commission's decision to refuse access to such information under s. 21(1) (unreasonable invasion of third party privacy) and submitted a referral to the court under s. 65 of the *Act*.

25. While I agree with Justice Clendening's statement that the *Act* is not intended to enable applicants to use the legislation as grounds to launch "fishing expeditions" against public bodies, I must note that the question of the interpretation and application of s. 8(2)(a) of the *Act* was not at issue in that case and thus I find that this is simply a consideration to be taken into account in my analysis below.

26. Given the lack of established jurisprudence in New Brunswick on s. 8(2)(a) of the *Act* at this point, these cases raise a novel question of interpretation and I appreciate the need for clarity on how such requests are to be handled by public bodies.

27. The University is not the first public body to express frustration with requests of this nature. This Office is aware from previous investigations that some public bodies dislike these kinds of requests on

[2] *Murray v. NB Police Comm.,* 2012 NBQB 154 (CanLII) at para. 15.

principle as they see them as fishing expeditions, with applicants casting the net wider than necessary to try to ensure that nothing is missed by the public body, or that requests are submitted by applicants in a purposely vague manner to keep the public body in the dark on what exactly applicants are looking for. Public bodies have previously expressed concerns to this Office that these requests can be tricky and time-consuming to process, as they often cover a wide variety of subject matters that might all merit separate considerations with respect to access rights, as opposed to all records about a particular subject matter, which can be more straightforward to process.

28. While I can certainly appreciate that some access requests may be more straightforward than others, the question before me is how much detail an applicant must provide to a public body in making an access request to ensure the request is compliant with s. 8(2)(a).

29. On the other hand, I am also aware that some applicants have their reasons for distrusting public bodies and worry that if they focus a request to specifically or narrowly, that the public body will take a strict or overly narrow interpretation that might not capture the full scope of what they are seeking. Also, applicants do not always have knowledge of the inner workings of public bodies and may not know how to word a request to encompass exactly what they are seeking and may choose to submit an intentionally broad request with a view to ensure nothing pertinent is missed. Being too specific in making an access request runs the risk that something an applicant may have genuinely been seeking is missed or not included in the public body's interpretation of the request, while submitting a request that is broader in scope runs the risk of the applicant not being able to exercise their access rights in a timely fashion, particularly if it entails a significant volume of records or other challenges for the public body.

30. Under s. 8(2)(a), an applicant making an access request must do one of the two following things:

- specify the record requested, or
- where the record in which the relevant information may be contained is not known to the applicant, provide enough particularity as to time, place and event to enable a person familiar with the subject matter to identify the relevant record.

31. Section 8(2)(a) places a positive obligation on applicants to make access requests in keeping with either of these two requirements; however, I do not find that it can be read separately from a public body's duty to assist under s. 9 of the *Act*, which requires public bodies to "make every reasonable effort to assist an applicant, without delay, fully and in an open and accurate manner."

32. In my view, the main purpose of this provision is to ensure that the public body can readily identify the record(s) the applicant is seeking to facilitate the efficient processing of requests.

33. Where applicants know what specific record(s) they are seeking, a simple request for such records is sufficient to meet the requirements of s. 8(2)(a), as there is no uncertainty about what the applicant is looking for in such cases.

34. Where applicants are not sure what the relevant record(s) may be, then they are required to provide details about the type of information they are seeking for the purpose of enabling an employee of the public body to identify the relevant records. The fact that an applicant might not know the actual record in which the information being sought would be found is not problematic, as section 8(2)(a) gives them option to provide a description of what they are looking for, which in turn triggers a duty on the public body to engage knowledgeable staff members to undertake search efforts to identify any relevant records that are in its custody or control. If a public body does not know what information or records an applicant is seeking, it will be unable to begin processing such a request and, in my view, this is the situation that s. 8(2)(a) intends to address. In these circumstances, the duty to assist under s. 9 also applies and requires the public body to "make every reasonable effort to assist an applicant, without delay, fully and in an open and accurate manner"", and the public body would then have a positive obligation to follow up with an applicant to provide assistance to clarify what information they are seeking.

***Application of s. 8(2)(a) to the present cases***

35. I will now turn to the facts of the present complaints and the question of whether the Applicants' respective access requests to the University are properly constituted requests for the purposes of s. 8(2)(a) of the *Act*.

36. The first applicant requested all communications sent to or from a University official between two specified dates over a one month time frame, while the second applicant requested all emails sent/to from specific email accounts, voicemails and text messages for two named University employees, along with their cell phone invoices within specified dates over a two-week timeframe.

37. The definition of "record" found in s. 1 of the *Act* provides as follows:

> "record" means a record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means, including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records.

38. The requests submitted by the Applicants respectively both clearly specify the requested records, which consist of written communications, voicemails, text messages, and cellular phone invoices, as the case may be.

39. While the University has submitted that the requests cannot be interpreted as being for specific records, I fail to see the logic behind this position. It is clear on the face of both requests what the requested records are and there is no question of where the University would have to focus its efforts to identify and retrieve such information. Given that the requested records collectively relate to three named University employees, as well as email accounts under the University's domain, it is reasonable to assume that these records would also be in the custody or control of the University.

40. I find that the records requested by the applicants are "records" as per the definition of s. 1 of the *Act*.

41. I also find that the applicants both specified the records they were seeking and thus the requirements of s. 8(2)(a) to "specify the record requested" have been met.

42. I do not find that the second part of s. 8(2)(a) is relevant to the present circumstances, as there is nothing to indicate that the applicants do not know which records might contain the information they are seeking. Only where this is the case does s. 8(2)(a) require an applicant to "provide enough particularity as to time, place and event to enable a person familiar with the subject matter to identify the relevant record".

43. As such, I find the Applicants are not required to provide the University with further particularities about time, place and event, in order for the University to be able to process and respond to their respective requests. The lack of these particulars in these cases does not leave the University in the position of not knowing where to look to identify the relevant records. It is clear what records the Applicants are seeking and I thus find that both requests are valid and in compliance with s. 8(2)(a) of the *Act*.

44. As for the University's submission that the federal Information Commissioner's decision in *National Defence (Re)* supports its position (which will be discussed in further detail below), I find that the facts in that case are distinguishable from the present complaints, as the case before the federal Commissioner was an access request for all practically all records with respect to a named federal employee without any parameters, including a timeframe. As indicated above, the Applicants in both cases have specified a clearly delineated and relatively short-term timeframe for the requested records. Had the request in the federal case provided a reasonable timeframe, it is possible that the Commissioner would have found otherwise.

***Does this interpretation open the door for overly broad access requests or an abuse of access rights by applicants?***

45. I am cognizant of the University's concerns about this interpretation opening the door for applicants to make broadly worded requests for access to any and all correspondence of any and all employees of the University, without the need for applicants to provide any further particulars or parameters. In fact, one could extend such a concern to an applicant requesting all records held by a public body for all time; however, I do not find this to be a compelling reason to reconsider my interpretation and findings in the present cases. Each access request is unique and needs to be assessed on its own merits and I am not prepared to alter my findings based on speculation or extreme hypotheticals.

46. I note that this is not, in fact, what the applicants have done in their respective access requests in the present case, as they both requested specific records and provided clearly defined timeframes for their requests (approximately one month and two weeks, respectively). As indicated above, in the case of the first request, the University has provided this Office with some limited information about the potential scope of the relevant records based on one day of email activity for the named individual, which suggests that the University has concerns about the volume of records involved and the amount resources that may be required to process the request as presented by the Applicant. The University did not provide any submissions on this point with respect to the second request.

47. Nevertheless, in returning to the University's premise and concern about the precedent that my interpretation of s. 8(2)(a) of the *Act* may set, I note that one of the stated purposes of the *Act* is:

> 2 The purposes of this Act are
>
> (a) to allow any person a right of access to records in the custody or under the control of public bodies, subject to the limited and specific exceptions set out in this Act…

48. This right is further set out in s. 7(1) of the *Act*:

> 7(1) Subject to this Act, every person is entitled to request and receive information relating to the public business of a public body, including, without restricting the generality of the foregoing, any activity or function carried on or performed by any public body to which this Act applies.

49. The overall purposes of the *Act*, as well as s. 7(1), clearly establish a broad right for any individual to make requests to public bodies for information about the conduct of the public business of a public body. Section 8 sets out how individuals can go about making an access request to a public body. As explained above, I find that the purpose of s. 8(2)(a) is to ensure that an access request either specifies the record requested, or in the alternative, where the applicant is unsure what record may contain the

information being sought, then they must provide particularities to enable the public body to engage in its duty to assist and to locate the records that are relevant to the request.

50. While applicants are free to word their requests as broadly as they want, so long as they meet the requirements of s. 8(2)(a) of the *Act* in either specifying the record(s) requested or, in the alternative, specific particularities to enable the public body to identify the relevant record(s), such a request is valid and must be accepted as such by the public body.

51. While this means that public bodies must do the initial legwork to begin conducting searches and gathering the relevant records upon receipt of such a request, if the public body discovers that it will have difficulty meeting its obligation to provide a timely response based on the volume of records involved or the resources that will be required to process them, it has a number of options available under the *Act* at that point.

52. The first step in such cases relates to the duty to assist provision under s. 9 of the *Act*. By communicating with the applicant as soon as practicable after beginning the initial processing of the request and explaining what the public body has discovered in its initial searches, the public body can then have an informed discussion with the applicant about whether they wish to maintain the current scope of the request, which might require additional time on the public body's part to fully respond. In some cases, the applicant may decide that receiving some information more quickly would be preferable and agree to narrow the scope of the request; however, this is at the applicant's discretion and there is no need for the applicant to do so under the *Act*.

53. If a request is unclear and the public body is unsure what the relevant records might be, the duty to assist under s. 9 calls on public bodies to contact the applicant to discuss and seek any necessary clarifications. The process for seeking clarification from an applicant is found in s. 12 of the *Act*. Where an applicant fails to respond to a public body's written request for clarification in a timely manner, the public body can then deem the request as abandoned, following which the applicant would have the right to file a complaint with this Office as per s. 12(2) of the *Act*.

54. If a public body is of the view that it needs more time than the initial thirty business day timeframe to respond to the request, it can opt to self-extend the time limit of its own accord under s. 11(3) of the *Act*, which will then trigger the applicant's right to complain to this Office about the extension. In the alternative, the public body could submit a time extension application to this Office seeking additional time to respond. In doing so, public bodies must provide substantiating facts and explanations to allow us to assess the merits of its application.

55. Depending on the circumstances, a public body may also consider whether s. 10 of the *Act* may be applicable, which speaks specifically to records in electronic format and only requires public bodies to process requests where they can do so using their normal hardware, software, and IT expertise and where this would not unreasonably interfere with their operations. If a public body relied on s. 10 to refuse access, this decision would then trigger the applicant's right to either complain to this Office or to refer the matter to a judge of the Court of Queen's Bench.

56. Public bodies also have the option of submitting a request to this Office seeking permission to disregard an access request on the grounds that the request would unreasonably interfere with its operations because of the systematic nature of the request or previous requests, as per s. 15 of the *Act*. In making such an application, public bodies must provide this Office with substantiating facts and explanations to allow us to assess the merits of such a request or risk their application being denied.

57. For the reasons above, I do not accept the University's objections on principle that accepting the two present requests as valid under s. 8(2)(a) of the *Act* would set an undesirable precedent against which future potential broadly-worded access requests may be measured. As we can see from ss. 10, 11(3), and 15, the legislation does not require public bodies to expend infinite resources to accommodate a single applicant's expansive access request and the *Act* will support curtailing applicants' access rights in certain cases, particularly where fully respecting an applicant's access rights would constitute an unreasonable interference with the public body's operations.

58. I take this opportunity to highlight the fact that the test that a public body must meet is to demonstrate an unreasonable interference with its operations. The *Act* presumes that processing and responding to access requests under the *Act* can and often will interfere with its operations, and the threshold to limit or curtail access rights is only triggered where doing so would be unreasonable.

59. To properly rely on any of these provisions to delay or deny access rights, the public body must present facts and compelling reasons in support of such a decision. Each case must be assessed individually, based on relevant facts and circumstances.

## IV CONCLUSION

60. For the reasons set out above, I find that both of the requests as submitted by the two above-noted applicants to the University meet the requirements of s. 8(2)(a) of the *Act* as they clearly indicate the records that are being requested. As they both indicate the records requested, within a certain specified timeframe, I do not find that the requirement to provide "enough particularity as to time,

place and event to enable a person familiar with the subject matter to identify the relevant record" is necessary, as it is clear from the wording of both requests what specific records are being sought.

61. I find that the University's concerns that arriving at such a conclusion would mean that applicants would be free to request any and all records without any parameters and thus overburden public bodies with overly broad requests to be speculative at best, and in any event, not relevant to the facts of the present cases. As set out above, the *Act* is based on the premise of a broad right to request and receive information about the public business of public bodies, and provides a number of ways for public bodies to address and manage requests that involve a large number of records and significant resources to process.

62. In arriving at this conclusion, my decision was informed by looking to precedents from other Canadian access oversight bodies on similar issues. While it is true that precedents from other jurisdictions are not binding in the interpretation and application of New Brunswick legislation, particularly where there are differences in the wording of their respective access to information legislation, they provide valuable insight on how similar issues have been addressed across the country and highlight issues that may merit additional or further consideration in my analysis.

63. In my view, the three following cases are illustrative of how broadly worded access requests have been addressed and managed by my colleagues across the country.

64. In *Executive Council (Re),*[3] the Newfoundland and Labrador Commissioner found that an access request for the subject lines of all emails sent to and from named individuals for a specified time frame was sufficient to meet the requirements of its equivalent provision to s. 8(2)(a) under its former *Access to Information and Protection of Privacy Act*:

> [9] As indicated, the Department is relying on sections 8(2) and 10(1)(b) to refuse access to the information requested. Section 8(2) states as follows:
>
> *8(2) A request shall be in the form set by the minister responsible for this Act and shall provide sufficient details about the information requested so that an employee familiar with the records of the public body can identify the record containing the information.*
>
> [10] The Applicant requested the subject lines of all e-mails to and from several people in the Premier's Office for two separate specified time periods. The request was specific enough so that an "employee familiar with the records of a public body can identify the record…"

[3] *Executive Council (Re),* 2009 CanLII 1468 (NL IPC).

> Identifying the relevant records was merely a matter of searching the e-mails of the specified people for the specified periods. Therefore, it is my opinion that section 8(2) is not applicable.
> …
>
> [12] As noted above, according to the information gathered by OCIO, the initial part of the request would encompass 36,867 e-mails (not including e-mails sent to or by the Premier), while the second part would encompass 83,086 e-mails for a total of 119,953. That number might at first appear to be extremely high, however, these are senior officials in the Premier's Office, including the Chief of Staff; Director of Communications; Principal Assistant to the Premier; Deputy Chief of Staff, Director of Operations, Press Secretary, Director of Strategic Communications, Planning and Priorities (Executive Council) and the Premier himself. Given the nature of the roles these people play in government, it is not unreasonable to assume they would receive a significant number of e-mails per day.
>
> [13] While it is only necessary to review the subject line and not the e-mail itself (in most cases reference to the body of the e-mail will not be necessary, however, in some circumstances the context of the whole e-mail may have to be considered in order to determine if the information in the subject line contains any information to which exceptions apply), this is still a formidable task. During this period, the person or persons charged with reviewing and redacting the record would not be able to attend to other ATIPP requests or other work they may be tasked with. Other Applicants would therefore be disadvantaged. Access to information is a right guaranteed by section 7 of the *ATIPPA* and this right is guaranteed to everyone equally. It is also important to note that this time estimate does not include the time it would take to search for, locate and retrieve the actual e-mails.

65. The Commissioner in that case also found that the public body was entitled to rely on s. 10 of the former *Access to Information and Protection of Privacy Act* (which is equivalent to s. 10 of the New Brunswick *Act*), as it had presented sufficient facts to support a finding that processing the request would unreasonably interfere with its operations and thus was not required to process it:

> [24] I have found that in this case, responding to the request would constitute an "unreasonable interference" with the daily operations of the Department. Therefore, I accept the Department's reliance on section 10 in support of its refusal to provide access to the requested records, but I should note, that such decisions are very much case specific. **The very nature of an access to information request may be to interfere somewhat with "normal" daily activities in an organization, however, the right of access to information is an important one and should not be lightly curtailed.**

> [25] I am also mindful that the Department attempted to assist the Applicant to revise or narrow his request, and did not simply refuse to provide access on the basis of section 10. Therefore, I see no reason why, should the Applicant submit a revised request (or requests), that the Department would not be willing to respond appropriately.
>
> [Emphasis added]

66. In *Service Alberta (Re),*[4] the Alberta Information and Privacy Commissioner's Office held that a request for the entire contents of a database was a properly constituted and sufficiently clear access request for the purposes of s. 7(2) of the Alberta *Freedom of Information and Protection of Privacy Act*. In that case, the public body argued that the request for the entire database contents was not a request for a "record", and submitted that the *Act* made an important distinction between a request for all data, as opposed to a more targeted request for information about a particular individual.

67. The Commissioner's Office in that case rejected the public body's position that the request was not a request for a particular record and held that the public body was obligated to the treat the request. As it was not clear at the time of the Commissioner's Office decision what work would be involved to process the request, the Commissioner referred to s. 10 of the Alberta legislation (which is the same as s. 10 of the New Brunswick *Act*) and held that the public body would be required to grant access if the information in the database could be produced using the normal hardware, software and technical expertise of the public body and doing so would not unreasonably interfere with the public body's operations.

68. In *National Defence (Re),*[5] the federal Information Commissioner found that an access request for all records, files, and folders made or used by a named individual was a not properly constituted request for the purposes of s. 6 of the federal *Access to Information Act* and the public body was not obligated to process or respond to the request:

> [10] Section 6 provides that a request for records under the Act must, among other things, "…provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record".
>
> [11] The request, as worded, is for "all records", "all files" and "all folders" in a multiplicity of locations, used by a named individual, or any of that individual's co-workers, with no limitations in terms of the substance of the information or records sought. As a result, the request does not offer any particulars by which any targeted record or records can, with a

[4] *Service Alberta (Re),* 2017 CanLII 5843 (AB OIPC).
[5] *Supra*, note 1.

> reasonable amount of effort, be identified. In other words, by seeking everything, the request does not reasonably identify anything.
>
> [12] I agree with DND that the request does not provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record, and is therefore not in accordance with the obligations placed on the requester by the Act. This interpretation, in my view, is consistent with Parliament's intent in setting out requisite criteria of a valid request in section 6. I am also satisfied that by attempting to better define the request numerous times, without success, DND has fulfilled its duty to assist responsibility.

69. In my view, these cases provide examples of the options that are available to public bodies facing broadly worded or scoped access requests and how such cases have been addressed by other Canadian oversight bodies. While this Office would necessarily have to address individual situations on a case-by-case basis and issue findings and decisions after assessing the evidence presented, the provisions of the *Act* could permit this Office to arrive at similar conclusions in similar cases, where merited under the circumstances.

## V RECOMMENDATION

70. In light of the above, I find that the requests as submitted by the Applicants in these cases meet the criteria of s. 8(2)(a) and thus are properly constituted requests and subject to the *Act*. As such, I recommend pursuant to s. 73(1)(a)(i) of the *Act* that the Applicants' respective requests be processed and responded to by the University in keeping with the requirements of Part 2 of the *Act*.

71. As set out in s. 74(2) of the *Act*, the University must give written notice of their decision with respect to these recommendations to the Applicants with a copy to this Office within 20 business days of receipt of this Report of Findings.

72. If the recommendation is not accepted, the University is to include reasons for its decision in its notice to the Applicants and inform of the 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 16th day of August 2021.

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Charles Murray
Acting Ombud for the Province of New Brunswick