



Report of Findings: 21/22-AP-020
Right to Information and Protection of Privacy Act
Department of Justice and Public Safety

December 16, 2021

Summary: The Applicant made an access request to the Department of Justice and Public Safety for information related to a COVID-19 compliance complaint made against the Applicant and her partner in late 2020. The Applicant was seeking the Department's complaint file, including the complaint made against them and related communications. The Department provided the Applicant with partial access, redacting some information under s. 21(1) (unreasonable invasion of third party privacy). The Applicant was not satisfied with the Department's response and filed a complaint with this Office, challenging the redactions and questioning whether the Department had conducted an adequate search for relevant records, given the apparent gaps in the records provided to the Applicant.

The Ombud found that the Department's refusal to disclose personal information of other individuals was proper under s. 21(1), including the identity of who made the compliance complaint against the Applicant and her partner, which could not be disclosed under s. 21(2)(b) of the Act.

This complaint also raised legitimate concerns about the Department's documentation practices with respect to COVID-19 compliance complaints, and to the Department's credit, it recognized and agreed that improvements were necessary. During the formal investigation, the Department developed and implemented a standardized process for COVID-19 compliance complaints that should address the gaps in documentation raised in this case. As such, the Ombud concluded the formal investigation without the need for formal recommendations to the Department.

Statutes Considered: [*Right to Information and Protection of Privacy Act*](#), SNB, c. R-10.6, ss. 21(1), 21(2)(b).

I BACKGROUND

1. On January 26, 2021, the Applicant made an access request to the Department of Justice and Public Safety ("the Department") for a copy of the COVID-19 Public Safety complaint file about the Applicant and her partner in late 2020. Specifically, the Applicant was seeking to obtain all files related to and including the complaint and related communications such as e-mails, telephone calls, and text messages.
2. The Department responded by letter dated April 21, 2021, granting the Applicant partial access, with redactions under s. 21(1) (unreasonable invasion of third party privacy).
3. The Applicant was not satisfied with the Department's decision and submitted a complaint to this Office. In doing so, the Applicant questioned the redactions made to the records provided, including the identity of who made the compliance complaint against the Applicant and her partner and whether the Department's response accounted for all of the relevant information, as in the Applicant's opinion, there appeared to be significant gaps in the records provided by the Department.
4. In making this complaint, the Applicant also raised a number of issues that are beyond the scope of this Office's mandate under the *Act*, such as the Applicant's concerns that the records provided contained inconsistencies and inaccuracies that did not match the Applicant's recollection of events, as well as allegations that Department officials had harassed the Applicant and her family members.
5. The matter was not resolved informally, and I conducted a formal investigation pursuant to s. 68(3) of the *Act*.
6. During the formal investigation process, I invited further submissions from the parties, particularly from the Department with respect to its documentation practices for COVID-19 compliance complaints, as the Applicant's concerns about the perceived gaps and lack of documentation with respect to the underlying compliance complaint had merit.

II ISSUES

7. The issues before me are:
 - whether the Department's reliance on s. 21(1) to redact the withheld information in the records provided to the Applicant was proper;
 - whether the Department conducted an adequate search; and

- whether the Department's documentation practices for COVID-19 compliance complaints are sufficient to ensure that relevant details about such complaints are promptly and properly documented in the Department's records.

III ANALYSIS

Section 21(1): Unreasonable invasion of third party privacy

8. Section 21(1) of the *Act* states:

21(1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's privacy.

9. This is a mandatory exception, which means that public bodies are prohibited from disclosing information where doing so would unreasonably invade a third party's privacy. Subsection 21(2) of the *Act* sets out certain circumstances where disclosure is deemed to be an unreasonable invasion of privacy. Subsection 21(3) also must be considered, as it deems the disclosure of certain kinds of personal information to not be an unreasonable invasion of privacy, in which case the personal information in question cannot be protected on the grounds of privacy.
10. In this case, the information that the Department redacted in the records provided to the Applicant consists of the names and identifying details about individuals who are not the Applicant that the Department interacted with in receiving and addressing the underlying compliance complaint.
11. I find that the redacted information consists of the personal information of third parties and thus the question of the Applicant's access rights to this information is governed by s. 21 of the *Act*.
12. While the Department did not specifically raise any of the provisions of s. 21(2) of the *Act*, which deems the disclosure of certain kinds of third party personal information to be an unreasonable invasion of privacy, I find the following provision is directly relevant to the question of whether the Applicant has the right to know the identity of who lodged a compliance complaint against them:

21(2) A disclosure of personal information about a third party shall be deemed to be an unreasonable invasion of the third party's privacy if

...

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of a law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation...

13. In this case, the identity of who made a complaint against the Applicant and her partner is personal information. I also find that it was compiled and is identifiable as part of the Department's investigation of the underlying compliance complaint against the Applicant and her partner under the Mandatory Order issued by the Minister of Justice and Public Safety under the *Emergency Measures Act*. A finding of non-compliance with self-isolation requirements under the Emergency Order at that time could have resulted in fines and/or charges for non-compliance.
14. As such, I find that the identity of who made a compliance complaint against the Applicant and her partner is protected under s. 21(2)(b) of the *Act*. Disclosure of this information to the Applicant is not necessary for prosecution purposes, nor to continue the investigation, which was concluded shortly after the complaint was made.
15. I also considered the deeming provisions set out in s. 21(3) and find that none of them apply in the present circumstances so as to otherwise permit the disclosure of this information.
16. As such, I find the Department's decision to refuse access to this information was not only proper but in fact required under s. 21(2)(b) of the *Act*.
17. The Department also withheld some personal information about a person known to the Applicant who contacted the Department to discuss the handling of the compliance complaint against the Applicant and her partner. While the Applicant was aware that this individual had contacted the Department for this purpose and thus may have been privy at the time to the nature of these discussions, I find that disclosure of these details to the Applicant in the present circumstances would be an unreasonable invasion of this individual's privacy, unless this person consented to the disclosure, of which there is no evidence before me that this was obtained.
18. In arriving at this conclusion, I also considered the Applicant's reasons for wanting to know who made the complaint against her and her partner. In the complaint submissions, the Applicant set out personal reasons for wanting to know who made the compliance complaint, providing details of an underlying ongoing family dispute. The Applicant suspected that the compliance complaint was part of an ongoing pattern of harassment against them. While it is clear why the Applicant wants to know this information and believes she has a right to know it under the circumstances, none of these

concerns negate the fact that this information is prohibited from disclosure as per s. 21(2)(b) of the Act.

19. I find that the Department's reliance to refuse access to the redacted information under s. 21(1) of the Act was proper and the Applicant has no right of access.

Search for records

20. As for the Department's search for relevant records, the Department indicated that it conducted searches in two databases, including the New Brunswick Travel Registry Database and an internal records management system, and emails of Department employees who were involved with the underlying compliance complaint against the Applicant and her partner. The Department also had conversations with these employees with a view to ensure that all notes, emails, and documents relating to this request were retrieved and provided.
21. At the time the compliance complaint against the Applicant and her partner was made in late 2020, the Department had not established a set process for these kinds of complaints. The Department explained that compliance complaints could be received from a variety of sources, including by telephone calls. The Department also indicated that not all such complaints may be documented, for example, where a complaint was received by telephone call to a Department employee and could be easily resolved through telephone calls with the appropriate individuals, while complaints received through other means would be documented.
22. In the present case, the complaint made against the Applicant and her partner was made by a telephone call to Department employees. The Department has no written documentation of this, except for the electronic communications between Department employees immediately following these discussions. This information was disclosed to the Applicant.
23. The Department also provided the Applicant with printouts of the relevant entries in the New Brunswick Travel Registry Database, emails between and amongst Department employees while they were addressing the compliance complaint, and statements from two Department employees who received the compliance complaint against the Applicant and her partner. The Department did not find any relevant information in its internal records management database or any other relevant information with respect to this request, which is consistent with the Department's explanations that some complaints received by telephone call may not have been documented at the point of intake.

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24. The Department also explained that there were additional discussions by telephone about the underlying compliance complaint at the time it was being addressed but that there were no notes or documentation of these discussions and thus the Department could not provide any further information to the Applicant on this point.
25. While I certainly appreciate the Applicant's concerns that the information provided by the Department in response to this request appeared to be sparse and did not tell the full story of how the underlying compliance complaint was handled, I find that the Department took all appropriate steps to conduct an adequate search for records and am satisfied that the Department has nothing further to provide to the Applicant in this case.
26. That being said, the reasons why the Department does not have any further information in its records in the present circumstances was because of a gap in the Department's complaint documentation practices, which is addressed below.

Documentation issues

27. The Department's lack of a clear compliance complaint investigation process at the time was of particular concern to me as poor documentation practices by public bodies can not only have a negative impact on access rights under the Act, but can also undermine the Department's complaint investigations in their own right.
28. I understand that the Department has been and continues to play a significant role in the Province's response to the ongoing pandemic and that the Department was tasked with substantial new responsibilities on an urgent basis since March 2020, including implementing the New Brunswick Travel Registration Program and taking on new enforcement obligations for compliance complaints with respect to the emergency order. While the Department had to develop and adopt these new measures very quickly and without the usual planning and vetting processes, the urgency that the Province was under in the early days of the pandemic has now abated. The issues raised in this complaint presented a good opportunity for the Department to revisit its practices with respect to COVID compliance complaints and address the obvious gaps in its process.
29. A further documentation issue is the fact that the Department had the compliance officers who first received the complaint calls against the Applicant and her partner document their recollection of events after the fact, and only after the Applicant made the present request for information. Presumably, this step was taken as the Department realized that documentation in its records was somewhat lacking and I can only assume that this was done with a view to provide the Applicant with

further details about how the complaint was received and acted on. In its response to the request, the Department did not provide the Applicant with explanations about how and when these records were created (i.e., a number of months after the events in question, and only after the Applicant's access request was submitted), and when the Applicant learned of this during the course of this investigation, the Applicant questioned whether an after-the-fact account can be trusted as an accurate statement of events, which I agree is a legitimate concern.

30. During the formal investigation, the Department readily accepted that its documentation practices in this context needed review and improvement and undertook to create and implement a new standardized process for COVID compliance complaints. The Department provided this Office with a copy of the new process and accompanying flowchart showing the life cycle of compliance complaints.
31. The new process designates a central intake point where all such complaints, regardless of how they are received, will be documented and inputted into a central repository. From there, complaints will be sorted by zone and forwarded along to the respective supervisor for triage and assignment to investigative staff. Investigative staff's assigned files will appear in the Department's internal records management system and investigative staff are to document the steps taken to investigate and address complaints in this system. Investigative staff will also retain all notes in their individual notebooks as appropriate.
32. Once investigations are marked as completed, the appropriate supervisor will review to determine whether any other steps are necessary to address the matter and ensure that the status of each file is updated accordingly.
33. The new process also assigns supervisors with the authority to monitor investigative staff's notebooks for compliance with retention policies, and the Inspector in charge of COVID Operations is responsible to oversee and ensure compliance with this new process.
34. The Department confirmed in writing to this Office that it issued a directive to all team leaders in early November that this new process was to be implemented immediately and that compliance was expected from that point forward.
35. Having reviewed the Department's new and recently implemented process documents, it appears that, if the process is followed as intended, these clarifications and improvements should ensure that future compliance complaint investigations are properly documented as events occur and allow the Department to be more open and transparent with individuals who want to better understand how complaints against them have been handled.

36. While this unfortunately cannot rectify the Applicant's concerns about how the underlying compliance complaint was documented in this case, in my view, the Department has taken the concerns raised in this complaint seriously and has demonstrated that it has undertaken appropriate steps to improve its processes and practices on a go-forward basis.

IV CONCLUSION

37. Based on the above, I find that the Department has granted access to all the information the Applicant is entitled to receive under the Act and that the Department's reliance on s. 21(1) (unreasonable invasion of privacy) to refuse access to some limited third party personal information was proper.
38. I also find that the Department has taken appropriate steps to address the documentation gaps and concerns raised by the Applicant in creating and implementing a new process for COVID compliance complaints.
39. As this is the case, there is no need for me to issue recommendations to the Department. I thank both the Applicant and the Department for their cooperation and thoughtful submissions during the investigation of this matter.

This Report issued in Fredericton, New Brunswick this 16th day of December 2021.



Charles Murray
Acting Ombud for the Province of New Brunswick