



**Office of the Information and Privacy Commissioner for Nova Scotia  
Report of the Commissioner (Review Officer)  
David Nurse**

**REVIEW REPORT 25-06**

**June 24, 2025**

**Dalhousie University**

**Summary:**

The applicant submitted a request for records to their former employer, Dalhousie University (the public body) for information pertaining to legal proceedings. The public body issued a decision providing some records in part, but the applicant believed records were missing. The applicant asked the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) to conduct a review of the public body's search efforts. After the applicant provided the OIPC with sufficient information to demonstrate that an additional search was warranted, the OIPC requested that the public body conduct another search. The public did so and provided some additional records to the applicant. After that search, records were still missing and so the OIPC requested that the public body conduct another new search. The public body failed to do so.

The Commissioner finds that the public body did not conduct an adequate search required under the duty to assist provision as set out in s. 7(1)(a) of the *Freedom of Information and Protection of Privacy Act (FOIPOP)*. Further, records were left out of the public body's search because they did not correctly apply clause 4(2)(c) of *FOIPOP*. This provision excludes specific records, including a "record in a court file." However, the provision applies only to records in a court file – not to legal filings or attached records that are in the custody or control of a public body.

The Commissioner recommends that the public body conduct another new search for the remaining missing records identified by the applicant. It is acceptable to search only records related to court cases, but the public body should not exclude copies of court records from the search.

**INTRODUCTION:**

[1] The applicant is a former employee of Dalhousie University (the public body). The applicant and the public body engaged in various legal proceedings spanning several years. In 2019, the applicant made an access to information request to the public body for records connected to these legal proceedings.

[2] In December 2020, the public body made its decision and provided records to the applicant; the public body withheld some records citing section 16 of the *Freedom of Information and Protection of Privacy Act (FOIPOP)*. Section 16 of *FOIPOP* allows the head of a public body to refuse to disclose information that is subject to solicitor-client privilege.

[3] In February 2021, the applicant asked the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) to conduct a review of the public body's decision because the applicant believed records are missing. The applicant also raised objections to the public body's severing of the records; however, this review deals only with the adequacy of the public body's search effort.

## **ISSUE:**

[4] Did the public body meet its duty to assist the applicant by conducting an adequate search, as required by s. 7(1)(a) of *FOIPOP*?

## **DISCUSSION:**

### **Public body incorrectly excluded records from their search**

[5] The public body appears to have concluded that records in its custody or control that may also appear in a court records are excluded from the scope of *FOIPOP*, and therefore the public body excluded those records from their search:

As per s. 4(2)(c) of *FOIPOP*, the Act does not apply to “a record in a court file, a record of a judge of the Court of Appeal, Supreme Court, Family Court or Provincial Court, a judicial administration record or a record relating to support services provided to the judges of those courts”. Therefore, Dalhousie University is not obligated to provide copies of court records, and so copies of court records were left out of the search.

[6] The public body's interpretation of clause 4(2)(c) of *FOIPOP* was incorrect. The specific words “in a court file” must be given their plain and ordinary meaning. This exemption only applies to those records that are in a court file; this would include both digital or physical files maintained by our courts.<sup>1</sup> This section does not exclude a record created by or in the custody or control of a public body, even when a copy of the same record is in a court file.

[7] The alternate interpretation would lead to the absurd result that any record of any kind in the custody or control of a public body that was subsequently filed with the court in any manner, for example, as an exhibit, would be forever excluded from the application of our access to information legislation.

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<sup>1</sup> *BC Order 01-27, Ministry of Attorney General, Re, [2001 CanLII 21581 \(BC IPC\)](#)*, at para. 12.

[8] Former Commissioner Tricia Ralph discussed the interpretation of this section in Review Report 22-10:

In *Order 01-27*, a public body argued that s. 3(1)(a) of British Columbia's *Freedom of Information and Protection of Privacy Act (FIPPA)*, which excludes the application of *FIPPA* to a record in a court file, should be interpreted to mean that any public body who also held a copy of a record in a court file was prohibited from releasing it. Former Commissioner Loukidelis rejected this argument on the basis that the meaning of "a record in a court file" is plain and therefore only applies to records that are physically located in a court file. It was noted that this section does not exclude records in the custody of a public body simply because originals or copies of the same records are also physically located in a court file.<sup>2</sup>

[9] I agree with the analysis in BC Order 01-27.

[10] As noted above in paragraph 5, copies of what the public body considered to be court records were left out of its search; this was an error by the public body.

**Public body entitled to limit new search to records related to court cases**

[11] At the initial stages of the investigation, the applicant provided a list of the types of records they believed were missing. During informal resolution, the public body conducted a new search during which some of these additional documents were located and shared with the applicant. After this search, there were still records from this list missing, but the public body declined to conduct another search. I have not included the list of the types of records the applicant still believes are missing, as the list would disclose the applicant's identity, however the list is known to both the applicant and the public body.

[12] The public body submitted that it was required to interpret the applicant's list of missing records according to the wording of the applicant's original request, which was for records "related to court cases," and that the applicant's list is effectively a new, broader request for records that is outside the original scope of "related to court cases."

[13] I understand, in part, why the public body takes this position; the applicant's list of missing records includes phrasing such as: "*All communications* between Dalhousie and [redacted] relating to [their] employment with Dalhousie... *All communications* between [redacted]..." [emphasis added]. It is reasonable to conclude that a request for all these records would go beyond the scope of the original access request that was related to specific court cases. However, the applicant did provide sufficient evidence to support why another search was warranted. So, the public body should make "every reasonable effort" to meet their burden and try to locate the requested records.

[14] While a new search should be conducted, *FOIPOP* does not impose absolute obligations, nor does it impose a standard of perfection. (2022 NSSC 68 (CanLII)). When the public body conducts its new search, it is entitled to limit its search to records related to the specific court

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<sup>2</sup> *NS Review Report, 22-10, Department of Natural Resources and Renewables (Re)*, [2022 NSOIPC 10 \(CanLII\)](#), para 16.

cases. In all its efforts, the public body is guided by its legal duty to respond “openly, accurately and completely” to the applicant.

[15] In addition, the public body may find records of the types that the applicant believes are missing by conducting a new search applying the correct interpretation of clause 4(2)(c) of *FOIPOP*.

#### **FINDING AND RECOMMENDATION:**

[16] I find that the public body did not conduct an adequate search for records as required under the duty to assist provision set out in s. 7(1)(a) of *FOIPOP*.

[17] The only remedy in reviews where search is at issue is for the Commissioner to recommend that the public body conduct another search.<sup>3</sup> It is acceptable to search only records related to court cases, but the public body should not exclude copies of court records from the search.

[18] I recommend that, within 45 days of the date of this review report, the public body conduct another new search for the remaining missing records identified by the applicant and inform the applicant of the outcome including the following:

- a. If no additional records are found, I recommend that the public body advise the applicant of this and provide a response to the applicant describing how the search was conducted, including the business areas and types of records searched, the accounts and folders searched, the keywords used in the search, the identity of the individuals who conducted the search (by position type), the time taken to conduct the search, whether any records related to the applicant’s request were destroyed and any existing explanation for why a record does not exist.
- b. If additional records are found, I recommend the public body issue the applicant a new decision and provide them with any records for which access is granted.

June 24, 2025

David Nurse  
Information and Privacy Commissioner for Nova Scotia

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<sup>3</sup> NS OIPC, *Know Your Rights Missing Records?* (April 2023), online: <https://oipc.novascotia.ca/sites/default/files/publications/KYR%20Search%20Guide%20for%20Applicants%20April%202023.pdf>.