



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

REVIEW REPORT 25-13

November 28, 2025

Halifax Regional Police

Summary:

I have decided that issuing an abbreviated review report is appropriate in this case. The legal test for deciding if a public body has conducted an adequate search is well settled; see, for example, *NS Review Report 24-02*, *NS Review Report 21-05* and *NS Review Report FI-11-76*.

This is one of two related reports. This report deals only with the adequacy of searches for email records; the related report, Review Report 25-12, addresses the adequacy of searches for both email records and text message records.

INTRODUCTION:

[1] The applicant filed 14 access requests (files) for copies of records in the custody and control of the public body. The applicant asked for copies of emails sent between identified employees of the public body during specific periods of time. In response, the public body said it found no responsive records in its custody or control.

[2] Section 467(1)(a) of *Part XX* of the *Municipal Government Act (MGA)* provides that a public body has a duty to assist an applicant; this duty includes the obligation to make “every reasonable effort” to locate requested records.

ISSUE:

[3] Did the public body meet its duty to assist the applicant by conducting an adequate search as required by s. 467(1)(a) of the *MGA*?

DISCUSSION:

[4] The legal test for deciding if a public body has conducted an adequate search has been addressed before; in this excerpt from NS Review Report 21-05, former Commissioner Tricia

Ralph discussed the legal duty existing under the *Freedom of Information and Protection of Privacy Act (FOIPOP)*, however, the duty to assist under the *MGA* is the same:

...

The requirement to conduct an adequate search arises out of the duty to assist provision in s. 7(1)(a) of *FOIPOP*. Section 7(1)(a) of *FOIPOP* states:

7 (1) Where a request is made pursuant to this Act for access to a record, the head of the public body to which the request is made shall

(a) make every reasonable effort to assist the applicant and to respond without delay to the applicant openly, accurately and completely;

[6] A provision outlining the duty to assist applicants is found in access to information legislation across Canada. Most jurisdictions have review reports canvassing the effort that public bodies must exert to meet this duty when searching for records. The leading case in Nova Scotia is *NS Review Report FI-11-76*. In that case, former Information and Privacy Commissioner Tully reviewed decisions from across Canada and concluded that where an applicant alleges a failure to conduct an adequate search, the applicant must provide something more than a mere assertion that a document should exist. In discharging this burden, the applicant must provide a reasonable basis for concluding that such records exist and sufficient particulars to identify the record(s). In providing sufficient particulars, the applicant should specify the subject matter of the record sought as precisely as possible and provide sufficient detail such as information relating to the time, place and event whenever possible.

...

[7] When an applicant discharges their burden, the burden then shifts to the public body to make “every reasonable effort” to locate the requested record(s). **The public body’s response should include a description of the business areas and record types searched (e.g., emails, physical files, databases), and identify the individuals who conducted the search (by position type). Also, the public body’s response should include the time taken to conduct the search. If there is an explanation for why a record may not exist, it should be provided.** These principles are further outlined in this Office’s document entitled *Duty to Assist #2: Conducting an Adequate Search*.

[8] A public body must demonstrate how it conducted a reasonable search or provide a reasonable explanation as to why it determined that responsive records do not exist. However, a public body does not need to prove this with absolute certainty. **The standard is reasonableness, not perfection. (emphasis added.)**

Public body conducted an adequate search in 11 of 14 files

[5] During the investigation, the OIPC Investigator requested that the public body conduct a new search, and the public body complied. No records were located. As required by the above-noted test, the public body provided a description of the business areas searched and the types of

records searched; specifically, the archived “Halifax.ca” emails of the identified employees who were retired at the time of our investigation. The public body provided the title of the individual who conducted the search and the time taken. After carefully considering the public body’s efforts, the OIPC Investigator determined that “every reasonable effort” was made in 11 of the 14 requests, based on the standard of reasonableness – not perfection. I agree with the Investigator and conclude that the public body met its duty to assist by conducting an adequate search in 11 of the 14 files.

Public body did not conduct an adequate search in 3 of 14 files

[6] The OIPC Investigator also determined that the public body did not meet its duty to assist by conducting an adequate search in 3 of the 14 files. For two of these files, the key issue is that the public body took the unusual position that it did not need to search the active email account of a current employee if the requested email was sent between a current employee and a retired employee. They searched only the archived records of the retired employee.

[7] The public body’s position was that a search of the retired employee’s emails was adequate as any records would be contained in the sent or archived folders of both inboxes. However, I am not satisfied that the search was adequate, and that there was no potential for responsive records to be missed. The public body did not provide any evidence, such as confirmation from its IT Department, that there was no potential for a file to be deleted or removed from the archived records, and, therefore, that there was no risk of the search missing responsive records.

[8] I would also note that it is reasonable and expected that the records of current employees will be searched when an access request is made; staff should expect this, and frankly it should be a routine part of their work. Searching a current employee’s email account or having the employee search their own email for responsive records, is not a complex or time-consuming task. Although the public body indicated it expects and directs current employees to search inboxes, there was no evidence provided as part of this review to substantiate this. In my understanding, it could be completed in a matter of minutes. This further contributes to my finding that the public body’s choice not to search current employees email records is unreasonable.

[9] In the third access request, the request was for email records between two retired employees. In its representations, the public body confirmed it searched the email account of only one of these two retired employees. It is reasonable to expect the accounts of both retired employees would be searched for responsive records. I agree with the Investigator and conclude that the public body did not meet its duty to assist by conducting an adequate search in 3 of the 14 files.

FINDING & RECOMMENDATIONS:

[10] As required under the duty to assist provision set out in section 467(1)(a) of the *MGA*, I find that the public body did conduct an adequate search for records in 11 of the 14 files and did not conduct an adequate search for records in 3 of the 14 files.¹

¹ OIPC review files: 21-00204, 21-00210 and 21-00226.

[11] I recommend that, within 45 days of the date of this review report, the public body conduct a new search of the email account of the current employee named in 2 of the access requests, as well as the retired employee's email account that was not searched in 1 of the access requests, and inform the applicant of the outcome and include the following:

a. If no records are found, the public body's response should include a description of the business areas and record types searched (e.g., emails, physical files, databases) and identify the individuals who conducted the search (by position type). Also, the public body's response should include the time taken to conduct the search. If there is an explanation for why a record may not exist, it should be provided.

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.

November 28, 2025

David Nurse
Information and Privacy Commissioner for Nova Scotia

OIPC Files: **21-00204; 21-00208; 21-00210; 21-00214; 21 00215; 21-00218; 21-00219;
21-00220; 21-00221;21-00224; 21-00225; 21-00226;21-00227; 21-00228**