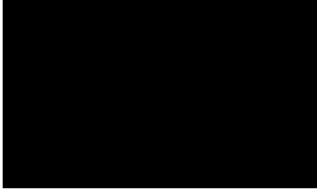


February 18, 2020



Dear 

**Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 [JPS/15/2020]**

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On February 3, 2020, the Department of Justice and Public Safety (JPS) received your request for access to the following records:

**"December 2019 briefing material titled "DNA Contamination."**

Please be advised that a decision has been made by the Deputy Minister of JPS to provide access to the requested record. However, access to some of the information has been refused in accordance with the following exceptions to disclosure, as specified in the **Access to Information and Protection of Privacy Act, 2015** (the Act):

- 31(1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
- (a) interfere with or harm a law enforcement matter;
  - (l) reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system;
  - (p) harm the conduct of existing or imminent legal proceedings.

40(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

As required by 8(2) of the Act, we have severed information that is unable to be disclosed and have provided you with as much information as possible. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request as set out in section 42 of the Act (a copy of this section has been enclosed for your reference). A request to the Commissioner must be made in writing not later than 15 business days of the date of this letter or a longer period that may be allowed by the Commissioner.

The appeal may be addressed to the Information and Privacy Commissioner as follows:

Office of the Information and Privacy Commissioner

2 Canada Drive  
P. O. Box 13004, Stn. A  
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309  
Toll-Free: 1-877-729-6309  
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act (a copy of this section of the Act has been enclosed for your reference).

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any questions please contact me by telephone at 709-729-7128, or by email at [sonjaelgohary@gov.nl.ca](mailto:sonjaelgohary@gov.nl.ca).

Sincerely,

A handwritten signature in black ink that reads "Sonja El-Gohary". The signature is written in a cursive style with a large initial "S".

Sonja El-Gohary  
ATIPP Coordinator

**Access or correction complaint**

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52 (1) or 53 (1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21 ;

(b) a decision respecting an extension of time under section 23 ;

(c) a variation of a procedure under section 24 ; or

(d) an estimate of costs or a decision not to waive a cost under section 26 .

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

**Direct appeal to Trial Division by an applicant**

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42 , the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45 (2).

**Ministerial Information Note  
Department of Justice and Public Safety**

**Title:** DNA Contamination

**Issue:** To inform the Minister that a case being prosecuted by the Crown has been affected by DNA contamination.

**Background and Current Status:**

- On September 30<sup>th</sup>, 2019, the Ontario Provincial Police advised the Office of the Chief Medical Examiner (OCME) that DNA results from a recent criminal case had been contaminated.
- On October 2, 2019, the Deputy Minister of Justice and Public Safety, the Chief Medical Examiner and the RNC convened to discuss the DNA results.
- [REDACTED]
- As the samples from these two cases were processed months apart, the RNC conducted a review into the possible source of [REDACTED]'s DNA introduction.

**Analysis:**

- Sensitivity in DNA testing has advanced substantially in the recent past. Contamination could occur at any point during collection or processing. ISO accredited forensic labs specializing in DNA testing occasionally encounter incidents of cross-contamination and non-conformance.
- The RNC is in the process of concluding their review into the possible source of the DNA contamination.
- [REDACTED]
- The normal process for forensic autopsies in criminally suspicious cases conducted at the Office of the Chief Medical Examiner (OCME) includes collecting fingernail scrapings and clippings from the deceased.
  - The scrapings are collected with a wooden scraper enclosed in a package of 10. Two scrapers are used; one for each hand, and scrapers are packaged with the nail scrapings in sealed envelopes.
  - Fingernail clippings are collected with standard nail clippers that are soaked in bleach and disinfectant to denature DNA prior to re-using.
  - One case included the submission of scrapings and clippings [REDACTED] while the other case included only scrapings [REDACTED]. Because the clippers were only used in one case, they were disregarded as a source of contamination.
  - The original package of scrapers used were unavailable for re-testing.
  - The possibility that the DNA contamination was a result of cross contamination from OCME autopsies is possible but very remote.

s.31(1)(p)

**Action Being Taken:**

- The OCME, in consultation with the RNC and RCMP, has since put policies in place to mitigate future risk of DNA contamination. [REDACTED]

Supplies are ordered and are expected to be available in early 2020.

s.31(1)(a), s.31(1)(l)

- The OCME does not receive DNA results in suspicious deaths investigated by law enforcement. These DNA results go directly to the investigating police force (RNC or RCMP).
- The OCME is unaware of any past issues with DNA contamination implicating the autopsy service.

**Next Steps:**

- The Director of Public Prosecutions will need to determine how to disclose that DNA contamination may have occurred at the OCME (i.e. news release, disclose to defence, etc.).
- The RNC and RCMP may initiate a review of DNA test results taken from forensic autopsies conducted at the OCME in the past three years to ensure no other instances of DNA contamination have occurred.

**Prepared/Approved by:** J. Chidley/L. Strickland/N. Denic/J. Mercer, QC

December 17, 2019