



Commissariat
à l'information
du Canada

Office of the
Information Commissioner
of Canada

Gatineau, Canada
K1A 1H3

PROTECTED A

July 25, 2016

Dr. Gabor Lukacs

Halifax NS

Subject: **Our file:** 3216-00029
 Institution's file: A-2015-00685/WS

Dear Dr. Lukacs:

I am writing to report to you the results of our investigation of your complaint, made under the *Access to Information Act* (the Act), against Transport Canada (TC). On November 25, 2015 TC received your request, quoted below:

All records, created and/or dated between June 15, 2015 and the present November 27, 2015, relating to the email sent by Captain Stephen Colman to Transport Canada staff on or around June 16, 2015, including but not limited to all correspondence (internal and external) where reference is made directly or indirectly to Cpt. Colman's email and/or the issues raised in his email.

On January 25, 2016, TC advised you that “a thorough search of records under the control of Transport Canada was conducted and no records were found pertaining to your request. Please note that the email sent by Captain Colman was never received by our sector.”

On April 2, 2016, you complained about TC’s response.

Investigation

During the course of our investigation, our office sought confirmation from TC concerning their assertion that Captain Colman’s email was not received.

Based on the copy of Captain Colman’s June 16, 2015, email that you provided to our office on April 2, 2016, the primary recipient was one of TC’s general email inboxes identified as: CASO-SACO@tc.gc.ca. This email address serves as the main electronic contact point for TC’s Ontario Region.

Besides confirming that a June 16, 2015, email from Captain Colman was not received at this email address, officials at TC advised our office that any email sent to this address would immediately receive an electronic “auto-reply” confirming that

the message had been received. No evidence was presented that Captain Colman received such an "auto-reply."

In addition, we could not find evidence that the individuals that were cc'd on Captain Colman's June 16, 2015, email ever received a copy of it.

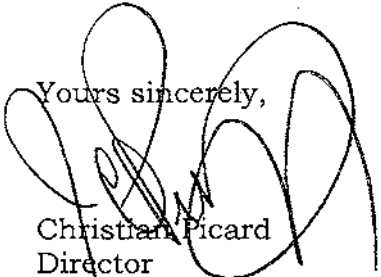
On July 12, 2016, in an email to our investigator, Mr. Jeffrey Vachon, you questioned TC's initial response, dated December 24, 2015, to your access request, which was that you had to provide consent from Captain Stephen Colman, and TC's subsequent denial of the existence of records. Please note, that following your request, TC should not have required a written consent from Captain Stephen Colman before processing your request. Please be assured that TC will be instructed that, in future, they do not require consent from a requester before processing a request such as yours.

Consequently, we now consider your complaint to be not well-founded.

Having now received the report of our investigation, section 41 of the Act provides that you may apply to the Federal Court for a review of Transport Canada's decision to deny you access to requested records. Such an application should name the Minister of Transport as respondent and it must be filed with the Court within 45 days of receiving this letter. Should you wish to proceed to the Federal Court, we suggest you contact the Court's Registry Office nearest you. Their locations are listed on the Court's website at www.fct-cf.gc.ca or you may call the Court's toll free phone number at 1-800-663-2096.

Please take note that the Information Commissioner's report of the results of her investigation is not subject to judicial review under any provision of the Act and that the Information Commissioner shall not be named as a respondent in an application under section 41 of the Act. A copy of section 41 is enclosed for your convenience.

Yours sincerely,



Christian Picard
Director
Strategic Case Management Team
Complaints Resolution and Compliance

c.c.: Access to Information and Privacy Coordinator
Transport Canada

Encl. (section 41)

Access to Information Act

Loi sur l'accès à l'information

REVIEW BY THE FEDERAL COURT

RÉVISION PAR LA COUR FÉDÉRALE

Review by
Federal Court

41. Any person who has been refused access to a record requested under this Act or a part thereof may, if a complaint has been made to the Information Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Information Commissioner are reported to the complainant under subsection 37(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.
R.S. 1985, c. A-1 s.41.

Révision par la
Cour fédérale

41. La personne qui s'est vu refuser communication totale ou partielle d'un document demandé en vertu de la présente loi et qui a déposé ou fait déposer une plainte à ce sujet devant le Commissaire à l'information peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 37(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger ou en autoriser la prorogation.
L.R. 1985, ch. A-1, art.41.