



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2015-007

October 29, 2015

Office of the Premier

Summary:

The Applicant requested from the Office of the Premier copies of correspondence from a named Third Party about a Local Service Committee and the Applicant's role in it. The Third Party objected to the disclosure on the ground that section 40 (disclosure harmful to personal privacy) prohibited it. The Commissioner agreed with the Office of the Premier that the disclosure would not be an unreasonable invasion of the personal privacy of the Third Party and recommended that the information be disclosed, subject to some minor redactions of the personal information of other individuals.

Statutes Cited:

Access to Information and Protection of Privacy Act, 2015, SNL 2015, c. A-1.2, ss. 2, 40.

Authorities Relied On: Newfoundland and Labrador OIPC Reports A-2014-006, A-2009-002, A-2007-003; Ontario OIPC Order PO-3073; Alberta OIPC Order F-2014-23.

I BACKGROUND

- [1] Under the provisions of the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or “the *Act*”) the Applicant submitted a request to the Office of the Premier as follows:

Correspondence from [a named Third Party] to the various Premiers regarding the Local Service Committee of [named community], any member of the Committee and correspondence regarding [the Applicant’s] role as Chairperson of the Local Service Committee. From 2010 to the present.

- [2] The Office of the Premier was prepared to disclose the responsive records to the Applicant, with some minor redactions, but chose first to give notice to the named individual Third Party, pursuant to subsection 19(5) of the *ATIPPA, 2015*, since the records included personal information about the Third Party. The Office of the Premier advised the Third Party that it did not believe that releasing the information would be harmful to her privacy rights under section 40 of the *Act*, but gave her an opportunity to disagree and ask this Office to review the decision.

- [3] The Third Party complained to this Office asking that we review the decision of the Office of the Premier. Attempts to resolve the complaint informally were not successful and the matter was referred for formal investigation under subsection 44(4) of the *Act*. Both the Office of the Premier and the Third Party were notified of this decision and given an opportunity to make additional written representations in support of their positions. The Office of the Premier had already made a written submission and declined to make a further submission. The Third Party made a brief further submission reiterating the views set out in her complaint.

II DECISION

- [4] The sole issue in this matter is whether the responsive records contain the personal information of the Third Party, and if so, whether disclosure of any of that information would be an unreasonable invasion of the Third Party’s personal privacy.

- [5] Personal information is defined in subsection 2(u) of the *ATIPPA, 2015*. The portions that are relevant to this matter read as follows:

(u) "personal information" means recorded information about an identifiable individual, including

...

(viii) the opinions of a person about the individual, and

(ix) the individual's personal views or opinions, except where they are about someone else;

[6] The *ATIPPA, 2015*, in section 40, prohibits disclosure of personal information where it would be an unreasonable invasion of personal privacy, the relevant portions of which read as follows:

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.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where

(a) the applicant is the individual to whom the information relates;

...

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;

...

(c) the personal information is relevant to a fair determination of the applicant's rights;

...

(i) the personal information was originally provided to the applicant; and

...

[7] As can be seen, what subsection 40(1) prohibits is "disclosure" of certain types of information. First, it has long been the position of this Office that, in most cases, providing an Applicant with information that is already known to the Applicant is not a "disclosure" within the meaning of the *Act*. This test, while still valid, should perhaps now be viewed as a specific instance of the current

more comprehensive test set out in subsection 40(5) of the *ATIPPA, 2015*, as a relevant circumstance in determining whether a disclosure constitutes an unreasonable invasion of privacy.

[8] In addition, the information in question must be personal information. This is defined in subsection 2(u) as recorded information about an identifiable individual, including that individual's opinions – **except** when those opinions are about someone else. Opinions about another person are that person's personal information, and therefore must be disclosed to that person on request.

[9] Finally, subsection 40(1) only prohibits disclosure of personal information if it would be an unreasonable invasion of a third party's personal privacy. The remainder of section 40 goes on to describe some situations where a disclosure is **not** presumed to be an unreasonable invasion of privacy (subsection (2)), some situations where a disclosure **is** presumed to be an unreasonable invasion of privacy (subsection (4)), and, in subsection (5), provides guidance for how to determine whether a disclosure constitutes an unreasonable invasion of privacy under other circumstances. Applying the relevant provisions of section 2 and section 40 to the responsive record I have reached the following conclusions.

[10] The Office of the Premier, in its written submissions, argues that much of the information in the responsive record is either information that would clearly be already in the possession of the Applicant, and therefore cannot be a "disclosure" or is an opinion expressed by the Third Party about the Applicant and therefore constitutes the personal information of the Applicant, not of the Third Party. I agree with both of those positions.

[11] The responsive record consists of 44 pages. Of those, 17 pages are either correspondence from the Applicant to the Third Party, or correspondence from the Third Party to the Applicant. All of those 17 pages are already in the possession of the Applicant or have been written by him. Providing those pages to the Applicant is not prohibited by subsection 40(1).

[12] One page is a letter from the Third Party to the Local Service Committee. The Applicant was the Chairperson of the Local Service Committee, and as such would have been aware of that letter. Hence it has already been disclosed to the Applicant.

- [13] Another three pages are letters from a Minister or a Department to the Third Party. They are, however, copied to the Applicant, and so have already been disclosed to him.
- [14] One further page is a letter from the Applicant to a Minister. As such it is already in his possession.
- [15] A further 17 pages are correspondence from the Third Party to the Office of the Premier, or to a Minister, in which the subject of the correspondence is the Applicant. Although the Third Party wrote those letters, the opinions expressed in them are about the Applicant and therefore are not the Third Party's own personal information. Rather, under paragraph 2(u)(ix) of the *ATIPPA, 2015* they are the personal information of the Applicant. This information must be disclosed to the Applicant.
- [16] In many of the above pages, there are passages which contain the opinions of the Third Party, and which are not directly about the Applicant. Such passages are, therefore, the Third Party's own personal information. However, upon examination they are all, in one way or another, about the ongoing dispute between the Third Party and the Local Service Committee, of which the Applicant is the Chairperson. In that role the Applicant is also the person blamed by the Third Party for what she alleges to be improprieties. The issues in that dispute, and the Third Party's views, as can be seen from the record, are all known to the Applicant. Applying paragraphs 40(5)(a) and (c) it cannot be said that disclosing to the Applicant those passages in the record that relate to that dispute would be an unreasonable invasion of the Third Party's privacy.
- [17] Six pages of the record are photographs. Although they were sent to the Office of the Premier by the Third Party, there is nothing in them that can be said to be personal information. Therefore there is no reason not to disclose them to the Applicant.
- [18] Finally, on four of the above pages there are small portions that contain the personal information of other identified individuals. I find that the Office of the Premier has properly severed that information.

[19] I conclude, therefore, that the disclosure of the information that the Office of the Premier proposes to disclose to the Applicant would not be an unreasonable invasion of the Third Party's personal privacy, or would not constitute a "disclosure" within the meaning of the *ATIPPA, 2015*.

III RECOMMENDATIONS

[20] Pursuant to section 47 of the *ATIPPA, 2015* I recommend that the Office of the Premier grant the Applicant access to the entire responsive record, excepting only the portions withheld from pages 17, 21, 22 and 32 on the basis of section 40 (personal information of other individuals).

[21] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the Office of the Premier must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[22] Please note that within 10 business days after receiving the decision of the Office of the Premier under section 49, the Third Party may appeal that decision to the Supreme Court of Newfoundland and Labrador Trial Division in accordance with section 54 of the *ATIPPA, 2015*. **No records should be disclosed to the Applicant until the expiration of the prescribed time for an appeal.**

[23] Dated at St. John's, in the Province of Newfoundland and Labrador, this 29th day of October, 2015.

E. P. Ring
Information and Privacy Commissioner
Newfoundland and Labrador