



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2016-018

September 13, 2016

Central Health

Summary:

The Applicant made a request to Central Health for records relating to an ongoing dispute. Central Health provided a large number of records, but withheld much information relying on section 30 (legal advice), section 32 (confidential evaluations) and section 40 (disclosures harmful to personal privacy). The Applicant filed a complaint with this Office. During informal resolution Central Health agreed to release most of the previously withheld information, and our Office agreed that the remainder was properly withheld. However, this file was not resolved within the statutory time required by the Act. As Central Health has disclosed to the Applicant all records recommended by this Office during informal resolution discussions, the Commissioner recommended that Central Health continue to withhold the information withheld from the records last sent to the Applicant.

Statutes Cited:

Access to Information and Protection of Privacy Act, 2015, SNL 2015, c. A1.2, ss.30, 32, 40.

I BACKGROUND

- [1] Central Health received a lengthy and detailed request under the *Access to Information and Protection of Privacy Act, 2015* ('ATIPPA, 2015' or "the Act") for documents including e-mails and other correspondence, notes and memoranda, relating to an ongoing dispute between Central Health and an individual.
- [2] Central Health gathered a large number of records responsive to the request – 830 pages in all. Central Health applied a number of exceptions to access provided for in the *ATIPPA, 2015*: section 30 (legal advice), section 32 (confidential evaluations) and section 40 (disclosure harmful to personal privacy). Central Health also considered section 9 (public interest) and concluded that it did not apply.
- [3] The Applicant was provided with a package of approximately 160 pages, some of which contained redactions. Central Health withheld pages 168-184 in their entirety, claiming section 32, and withheld pages 185-830 in their entirety, claiming section 30. The Applicant filed a complaint with this Office.
- [4] During the informal resolution process Central Health agreed with our Office to release a great deal of the previously withheld information. It was agreed that most of the information previously withheld on the basis of section 30 was not subject to solicitor-client privilege. It was also agreed that section 32 did not apply to much of the information previously withheld on that ground. It was agreed, however, that section 40 did apply to most of the information withheld on that ground.
- [5] Owing to the large number of pages to be reviewed and the length of time required for legal consultations, it proved impossible to reach an informal resolution to the satisfaction of both parties within the time limits required by subsection 44(5) of the *ATIPPA, 2015*. This complaint was therefore referred to formal investigation pursuant to subsection 44(4).
- [6] At the time of the referral to formal investigation, Central Health and this Office had agreed on the application of all remaining exceptions, which included some information to be withheld on the basis of sections 30, 32 and 40. Central Health undertook to send a

new, appropriately redacted copy of the responsive records to the Applicant, and did so. Due to the time constraints, however, the Applicant was unable to review the record and arrive at a decision whether to agree to accept this outcome as an informal resolution, before the expiry of the 65 business days by which date this Report had to be issued under section 46 of the *ATIPPA, 2015*.

II PUBLIC BODY'S POSITION

- [7] Our Office advised Central Health that there was no need for further written submissions, as all outstanding issues had been resolved to the satisfaction of this Office.

III APPLICANT'S POSITION

- [8] The Applicant was invited to provide written submissions. However, due to the time constraints, the Applicant did not provide any submissions.

IV DECISION

- [9] As I have stated above, our Office has reached the conclusion that the exceptions claimed by Central Health, in the final version of the responsive record sent to the Applicant, were properly applied. However, the Applicant did not have time to review the record and decide whether to agree to an informal resolution. Therefore I have made the following recommendation.

V RECOMMENDATIONS

- [10] Under the authority of section 47 of the *ATIPPA, 2015* I recommend that Central Health continue to withhold the information withheld on the basis of sections 30, 32 and 40 in the copy of the responsive records sent on August 23, 2016 to the Applicant.
- [11] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of Central Health 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.

[12] Dated at St. John's, in the Province of Newfoundland and Labrador, this 13th day of September 2016.

Donovan Molloy, Q.C.
Information and Privacy Commissioner
Newfoundland and Labrador

