



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2017-024

November 3, 2017

Town of Paradise

Summary:

The Town of Paradise (the “Town”) received an access request seeking disclosure of information, including details regarding the “severance or other payments” paid out to a named individual. The Town provided the Applicant with most of the information requested but denied access to the payment information relying on sections 38 (disclosure harmful to labour relations interests of public body as employer) and 40 (disclosure harmful to personal privacy) of the *ATIPPA, 2015*. The Applicant was not satisfied with the Town’s response and filed a complaint with this Office. The Commissioner determined that sections 38 and 40 did not permit withholding the payment information. The Commissioner recommended disclosure of the payment information, but that other information contained in the record related to employment history continue to be withheld by the Town.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), S.N.L. 2015, c. A-1.2, sections 38 and 40.

Authorities Relied On:

OIPC NL Report [A-2008-003](#); BC OIPC [Order 04-04](#); BC OIPC [Order F14-41](#); ON OIPC [Order P-653](#).

I BACKGROUND

[1] Pursuant to the *Access to Information and Protection of Privacy Act, 2015* (the “*ATIPPA, 2015*” or the “*Act*”) the Town of Paradise (the “*Town*”) received an access to information request seeking disclosure of various pieces of information. The Town itemized the request as follows:

1. *How long [named individual] was employed with the Town?*
2. *How much was paid out in severance or other payments and was that approved in a public meeting?*
3. *With the consolidation of various position [sic] what is the breakdown of the \$442,000 savings to the Town for the fiscal year?*
4. *A copy of the Organization chart before the consolidation of the Public Works Department and the Engineering Department. (Note: Added July 6, 2017 to the request via telephone conversation).*

[2] The Applicant received records with respect to #s 1, 3 and 4. With respect to #2, the Town advised that the matter was not the subject of a public meeting. The Town refused access to “the severance or other payments” of the named individual based on section 38 (disclosure harmful to labour relations interests of a public body as employer) and section 40 (disclosure harmful to personal privacy) of the *ATIPPA, 2015*. The Applicant was not satisfied with the Town’s response and filed a complaint with this Office.

[3] The complaint proceeded to formal investigation pursuant to section 44(4) of the *ATIPPA, 2015* as informal resolution was not possible.

II PUBLIC BODY’S POSITION

[4] The Town’s position is that the information is exempt from disclosure pursuant to sections 38 and section 40 of the *ATIPPA, 2015*.

[5] In its submission to this Office, the Town stated that the severance and other payments of the named individual was not the subject of discussion or disclosure at a public meeting.

[6] The Town argues that the information at issue meets the section 38 exception to disclosure as the information is labour relations information of the Town (as an employer) that was consistently treated in a confidential manner and if released would cause harm to the Town.

[7] The Town further argues that the information should be withheld as disclosure could be harmful to the personal privacy of a third party. The Town argues that the information should be withheld based on section 40(4)(c) of the *ATIPPA, 2015* because the information relates to employment history of the named individual.

[8] The Town provided other arguments based on sections 38 and 40 of the *ATIPPA, 2015* that have been considered but not referenced here as discussion of those arguments would potentially disclose the substance of information that is exempt from disclosure.

III APPLICANT'S POSITION

[9] The Applicant's position is that this information should be disclosed as it is an amount paid out by a public body to an employee and the Applicant believes that the public has a right to know this information.

IV THIRD PARTY'S POSITION

[10] A Third Party (the named individual) had an opportunity to provide representations under section 96(1) of the *ATIPPA, 2015*. The Third Party argues that the information relating to the "severance and other payment" should not be disclosed for various reasons, including that the information relates to personal confidentiality.

V DECISION

[11] The relevant portions of section 38 of the *ATIPPA, 2015* are:

38. (1) *The head of a public body may refuse to disclose to an applicant information that would reveal*

(a) labour relations information of the public body as an employer that is prepared or supplied, implicitly or explicitly, in confidence, and is treated consistently as confidential information by the public body as an employer; or

(b) labour relations information the disclosure of which could reasonably be expected to

(i) harm the competitive position of the public body as an employer or interfere with the negotiating position of the public body as an employer,

(ii) result in significant financial loss or gain to the public body as an employer, or

(iii) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer, staff relations specialist or other person or body appointed to resolve or inquire into a labour relations dispute, including information or records prepared by or for the public body in contemplation of litigation or arbitration or in contemplation of a settlement offer.

[12] The Town argued that section 38 applies to exclude the payment information. The fact that the information at issue is payment information does not automatically make it labour relations information. While no other jurisdiction has an exception similar to section 38 of the *ATIPPA, 2015*, a definition of labour relations from Ontario Order P-653 is helpful in interpreting the meaning of labour relations as being: “... information concerning the collective relationship between an employer and its employees.” In BC Order 04-04 that definition is used in interpreting the term “labour relations” in that province’s freedom of information legislation. The adjudicator determined that since all records involved an individual teacher’s case and did not contain information related to the collective bargaining process or other general labour relations matters, the information was not “labour relations” information. An individual employee’s payment information does not fall within the exception in section 38 and therefore it does not apply in this situation to withhold the payment information.

[13] The Town also argued that section 40 applies to the record because it relates to employment history, and disclosure would therefore be an unreasonable invasion of the Third Party's privacy. The relevant portions of section 40 of the *ATIPPA, 2015* are:

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

[...]

(f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;

[...]

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

[...]

(c) the personal information relates to employment or educational history;

[14] Section 2(u) of the *ATIPPA, 2015* defines personal information to include information about an individual's financial or employment status or history. The payment information of the named individual is therefore personal information within the meaning of the Act.

[15] The *ATIPPA, 2015* also defines "remuneration" under section 2(z):

(z) "remuneration" includes salary, wages, overtime pay, bonuses, allowances, honorariums, severance pay, and the aggregate of the contributions of a public body to pension, insurance, health and other benefit plans;

[16] The definition of remuneration was discussed in Report A-2008-003 and is relevant to the point that, what an employee is *entitled* to receive in severance as well as what has *actually* been received should both be disclosed:

[42] What constitutes remuneration has been considered on many occasions in other jurisdictions with similar legislative provisions. It has been held to include, for example, not only base salary (or “salary range” in the case of the particular Ontario legislative wording), but bonus payments, merit pay, severance pay, incentives, and a whole range of additional entitlements such as health and other insurance-related benefits, sick leave, vacation and other leave, termination allowances including severance pay, reimbursement for expenses, and pension and death benefits. (See Ontario Information and Privacy Commissioner Order M-23.) It has also been held to include financial entitlements that may not have been part of a standard package, but were negotiated as part of the particular employment contract in question.

[43] It is important to note that in cases in which these issues have been considered, it has been held that remuneration information which is to be disclosed to the public includes not only the amounts to which an employee is entitled, but, for example, the amounts of severance pay, or reimbursements for expenses actually received. These decisions are consistent with the principle that where salaries and benefits are paid from the public purse, it is appropriate that the definition be given a “fairly expansive interpretation” in keeping with the purposes of transparency and accountability. (See, for example, Ontario Information and Privacy Commissioner Order PO-2641.)

[17] Section 40(2)(f) states that disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy where the information is about a third party’s position, functions or remuneration as an officer, employee or member of a public body. In this case the named individual was an employee of the Town. As payment information is clearly within the definition of remuneration, and disclosure is not an unreasonable invasion of a third party’s personal privacy where the information is about a third party’s remuneration, I conclude that the disclosure of payment information relating to the named individual is not an unreasonable invasion of personal privacy in this case. This situation is more similar to that which was before the British Columbia Commissioner in Order F14-41 as the disclosure of the name is not part of the information to be released because the applicant already had the individual’s name.

[18] The record, while containing the payment information, also contains other information relating to employment history. This information should be withheld pursuant to section 40(4)(c) of the *ATIPPA, 2015* as it relates to the named individual’s employment history and would be an unreasonable invasion of personal privacy if disclosed.

VI RECOMMENDATIONS

- [19] Under the authority of section 47 of the *ATIPPA, 2015* I recommend that the Town disclose the payment information to the Applicant (the highlighted information contained in the copy of the responsive record provided to the Town along with this Report) and continue to withhold any information not highlighted in the record provided to the Town.
- [20] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the Town must give written notice of his or her decision with respect to this recommendation to the Commissioner and to any person who was sent a copy of this Report (in this case the Applicant and the Third Party) within 10 business days of receiving this Report.
- [21] Please note that within 10 business days of receiving the decision of the Town under section 49, the Applicant or 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*.
- [22] Dated at St. John's, in the Province of Newfoundland and Labrador, this 3rd day of November, 2017.

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