



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2018-005

January 30, 2018

Town of Paradise

Summary:

The Town of Paradise received an access to information request for video recordings from the security cameras installed and maintained by the Town at its Paradise Double Ice Complex. The Town refused the request citing section 40 of the *ATIPPA, 2015* (personal information of identifiable individuals). During the investigation, the Town advised that its system erased the recordings after receipt of the access request. The Town did not view the recordings to determine if they contained any personal information. The Commissioner concluded that the Town failed to comply with the *ATIPPA, 2015* and recommended that it take action to ensure that the Town's video recording system is capable of storing recordings as required under the Town's retention policy, and that it acquire or source the capacity to de-identify persons recorded by its video surveillance systems.

Statutes Cited:

[Access to Information and Protection of Privacy Act](#), SNL 2015, c.A1.2, section 40

Authorities Relied On:

Report A-2017-018, A-2017-019, and A-2018-004; [Ottawa \(City\) \(Re\), 2016 CanLII 68086 \(ON IPC\) \(Ontario MO 3358\)](#)

Other Resources:

[Access to Information Policy and Procedures Manual Guidelines for Video Surveillance by Public Bodies](#)

I BACKGROUND

[1] The Town of Paradise employs video surveillance systems at some of its facilities, including the Paradise Double Ice Complex (the “Complex”). Video cameras monitor the interior and exterior of the Complex. Footage is stored on the Town’s own devices/network.

[2] The Applicant made an access to information request to the Town of Paradise (the “Town”) on or about September 28, 2017 for the following information:

The camera footage for the Double Ice Complex for the date of September 26, 2017. All cameras for the day.

[3] The Town noted in its advisory response on October 12, 2017 that the information sought by the Applicant may be subject to section 40 of the *Access to Information and Protection of Privacy Act, 2015* (the “ATIPPA, 2015” or the “Act”). In its final response on October 26, 2017, the Town refused to provide the requested records because the surveillance camera recordings contained personal information about identifiable individuals and as such withheld pursuant to section 40 of the *ATIPPA, 2015*.

[4] The Applicant filed a complaint with this Office. During our investigation, the Town disclosed that its system erased records responsive to the Complainant’s request on October 11, 2017, the day before it sent the Applicant its advisory response. The Town’s failure to preserve the recordings precluded any opportunity to review the responsive records as part of our investigation.

[5] After failing to achieve an informal resolution, the complaint proceeded to formal investigation in accordance with section 44 of the *ATIPPA, 2015*.

II THE TOWN’S POSITION

[6] The Town provided a copy of its Video Surveillance Policy (the “Policy”), which states, with regard to the collection and retention of surveillance recordings that:

- video surveillance recordings be retained for at least 30 days;
- video surveillance recordings may be retained upon request for 180 days or more if needed for a criminal, civil or administrative proceeding; and
- requests by the public to access video surveillance recordings will be dealt with under the *ATIPPA, 2015*.

[7] The Town advised that while the Policy requires retention of recordings for at least 30 days, its equipment is also set up to over-write recordings when it exceeds its storage capacity. The system also operates in a manner that results in unpredictability of the volume of data recorded and stored. Due to insufficient storage space, the Town's surveillance system was automatically overwriting footage after approximately 14.5 days, rather than the 30 days specified in the Policy.

[8] The Town further advised that on receipt of the request, it determined, without ever viewing the recordings, that they contained identifying information of people using, and employees working at, the Complex.

III THE COMPLAINANT'S POSITION

[9] The Complainant submits that the Town failed to respond properly to the access to information request and further that the destruction of the records was an offence under the *ATIPPA, 2015*.

IV DECISION

[10] If the video recordings sought by the Applicant captured identifiable persons, their depictions consist of personal information as defined in section 2(u) of the Act, including:

(u)(ii) "personal information" means recorded information about an identifiable individual, including (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,

[11] The Town's position is that the surveillance recordings contained images of identifiable persons in attendance at the Complex and disclosure of the recordings would be an unreasonable invasion of the privacy of those individuals. The Town did not review the recordings to assess whether they captured images of identifiable persons. The Town's failure to take any measures to preserve the recordings in question means we will never know if, and to what extent, the recordings captured identifiable images of persons at the Complex. It is not as if the system overwrote the requested recordings within a day or two of receipt of the request. Thirteen days elapsed between receipt of the request and erasure of the recordings. The Town acknowledged that they were aware for some time of the storage capacity limitations. The Town appears indifferent to its obligations pursuant to the *ATIPPA, 2015*.

[12] Even if portions of the recordings captured the personal information of identifiable individuals, that fact would not automatically preclude disclosure pursuant to the *ATIPPA, 2015*. De-identification of individuals by blurring/pixelating their images could allow disclosure of the recordings. Ontario Report MO-3358 addresses a very similar scenario. After retaining an outside agency to de-identify persons captured by video cameras belonging to the City of Ottawa, disclosure of the recordings was no longer an unreasonable invasion of the personal privacy of the people recorded. Our [Guidelines for Video Surveillance by Public Bodies](#) recommend that public bodies have this capacity. A lack of technical or other capacity to use in-house personnel may require outsourcing de-identification requirements.

[13] Furthermore, some of the recordings may show non-identifiable people or no people at all. Additionally, if the Town had reviewed the images it may have decided to disclose identifiable information in accordance with sections 40(2) or 40(5).

[14] The Town also failed to comply with its own Policy regarding retention of records. Report A-2007-018 noted that while public bodies may set their own retention policies, once put into force, public bodies must follow them.

[15] Report A-2018-004, issued concurrently with this Report, addresses the Town's destruction of records while processing an access request. As noted in that Report, the preservation of public body records is critical to the functioning of the Province's access to information regime. A heightened duty to preserve records exists in the face of a request seeking access to them. Report A-2017-019 is clear on the requirement to retain records on receipt of an access request, regardless of retention policies. Willful destruction of records with the intent to evade a request for access to records is an offence under the *Act*. While I concluded in Report A-2018-004 that the Town was careless, the failure to preserve these records was grossly negligent. The Town compounded its fault by sending an advisory and final response omitting any mention that the records no longer existed, and misrepresented that it properly assessed the records pursuant to the *Act*. In future similar situations it may be difficult to accept that the Town was merely negligent when it either destroys or fails to preserve responsive records.

V CONCLUSION

[16] While the surveillance recordings were not preserved, I cannot conclude that the Town intentionally allowed this to happen in order to evade the access request.

[17] While the conduct of the Town may not merit prosecution under section 115, its practices are wholly inadequate: it failed to preserve responsive records in accordance with either its own Policy or the *ATIPPA, 2015* and it applied exceptions without reviewing responsive records.

VI RECOMMENDATIONS

[18] Under the authority of section 47 of the *ATIPPA, 2015*, I recommend that the head of the Town of Paradise, within 90 days of today's date, acquire the storage capacity to preserve all video surveillance recordings in compliance with its Video Surveillance Policy and acquire or source the capacity to de-identify persons recorded by its surveillance cameras.

[19] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the Town of Paradise 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 (in this case, the Complainant) within 10 business days of receiving this Report.

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 30th day of January, 2018.

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

