

NEWFOUNDLAND AND LABRADOR
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

REPORT P-2008-004

Department of Municipal Affairs

Summary:

The Office of the Information and Privacy Commissioner received a complaint under the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*” or the “*Act*”) regarding the Department of Municipal Affairs. The Complainant stated that his personal information had been improperly disclosed when the Department responded to a letter of complaint that he had written to the Department regarding the actions of the Town in which he resided, and copied that response to the Town.

The Commissioner found that in the course of carrying out its investigation, and in its response to the Complainant, the Department had disclosed some of the Complainant’s personal information to the Town, including his name and his issues and concerns. However, the Commissioner found that the Complainant had written to the Department for the specific purpose of having his concerns addressed, and that the Department could not deal with those concerns without disclosing the details, including his identity, to the Town. The Commissioner concluded that, for the most part, the information was disclosed either for the purpose for which it was obtained or for a use consistent with that purpose, pursuant to section 39 of the *ATIPPA*, and that therefore the disclosure did not violate the privacy provisions of the *Act*. The Commissioner expressed the view that an individual who writes to a Department expressing concerns or making a complaint of this particular nature should understand that it is unreasonable to expect that such matters can be addressed anonymously.

The Commissioner observed, however, that while the Department acted reasonably in disclosing the information that it was necessary to disclose in dealing with the complaint, it was not necessary to disclose certain items of information, such as the complainant’s fax number. The

Commissioner recommended that in such circumstances public bodies be mindful of the need to limit disclosure of personal information to the minimum required to accomplish legitimate purposes. The Commissioner also recommended that in circumstances where it appears that an individual has written to a public body with some expectation of confidentiality, the public body should, whenever possible, advise the individual that it may be necessary to disclose personal information, before actually doing so.

Statutes Cited: *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A1.1, as amended, sections 2, 39, 40.

Authorities Cited: Ontario Information and Privacy Commissioner Reports I94-064P (Ministry of Municipal Affairs); MC-040027-1 (Township of Atikokan, June 28, 2005); PC-050014-1 (Ministry of Children and Youth Services, August 2, 2006); MC-050015-1 (Town of Cochrane, January 13, 2006).

I BACKGROUND

[1] During the fall of 2007, the Complainant had been involved in an ongoing process of attempting to get information, on a variety of subjects, from the Town in which he resided (the “Town”). Not being satisfied with the results, the Complainant faxed a letter of complaint to the Department of Municipal Affairs (the “Department”) on 28 December 2007.

[2] In his letter, which was headed “private and confidential” the Complainant characterized his complaint as follows:

“Nature of complaint: Failure to supply records of public meeting at request of taxpayer.”

The Complainant went on to provide a number of specific examples of what he regarded as either refusals to supply requested information, or excessive delay in doing so.

[3] Staff at the Department’s Western Regional Office reviewed the correspondence from the Complainant, and contacted staff at the Town to discuss the Complainant’s concerns. In particular, the Department discussed with Town officials their policies and procedures governing the release of information to the public.

[4] On 14 February 2008 the Department wrote to the Complainant in response to his complaint. The Department reviewed the Complainant’s specific examples, and, at least implicitly, found no fault with the way that the Town had dealt with the Complainant’s information requests. The Department’s letter of response was copied to the Town.

[5] On 25 February 2008 this Office received a privacy complaint from the Complainant. In that complaint, the Complainant stated that his personal information had not been adequately protected, had been improperly used, or had been improperly disclosed, contrary to the provisions of the *Access to Information and Protection of Privacy Act* (the “ATIPPA”) when the Department’s letter to him dated 28 February 2008 had been copied to the Town.

II THE COMPLAINANT'S SUBMISSION

- [6] The Complainant submitted that the Department, both in copying its letter dated 28 February 2008 to the Town, and in the investigation and discussion with the Town that preceded it, had disclosed his personal information to the Town. In his view, this was not necessary. He pointed out that the privacy provisions of the *ATIPPA* had recently come into force, and that the Department should be reminded that care must be taken when providing other parties with someone's private or personal information. In his view, although the information actually disclosed in this case was not a serious matter, the Department should acknowledge that a mistake had been made.

III THE DEPARTMENT'S SUBMISSION

- [7] The Department, in its response to the complaint, stated as follows:

The release of this information to [the Town] is justified under s. 39(1)(c) of the Access to Information and Protection of Privacy Act. By the Applicant writing to the Department of Municipal Affairs, the Applicant was requesting an inquiry by the Department into the matter. An integral part of an inquiry is discussing the matter with the other party so that they can know the case against them and can make a defense. Following the inquiry the other party has a right to know the outcome. This was done by copy of the letter in question to the Town.

- [8] The Department reviewed the events of the matter in some detail, and concluded with its position that the Complainant's personal information was adequately protected.

IV DISCUSSION

- [9] There are two issues to be determined in this investigation:

(1) Was the Complainant's personal information disclosed to the Town, as alleged?

(2) If so, was that disclosure made in accordance with the *ATIPPA*?

(1) Was Personal Information Disclosed?

[10] The *ATIPPA* defines personal information in section 2(o) as follows:

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

(i) the individual's name, address or telephone number,

(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,

(iii) the individual's age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health care status or history, including a physical or mental disability,

(vii) information about the individual's educational, financial, criminal or employment status or history,

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

(ix) the individual's personal views or opinions;

[11] In its discussions with the Town, the Department disclosed to the Town the following information about the Complainant: his name, the fact that he had made a complaint about the Town, and details of the complaint. I find that all of that information constituted personal information of the Complainant. An individual's name is explicitly included among the things included in "personal information" in paragraph (i), above. Furthermore, the fact that an individual has made a complaint about a public body is clearly information "about" that

individual, and the details of that complaint constitute, in part, the individual's personal views or opinions within the meaning of paragraph (ix).

[12] In addition, the Department's letter to the Complainant dated 14 February 2008, copied to the Town, contained the Complainant's name and fax number (though not his address), which are clearly his personal information. It also contained references to his complaints about the Town, which, as stated above, constitutes his personal information. Finally, the letter also contains the Department's assessment of the Complainant's concerns, and its conclusions about whether the complaints have merit. I find that those conclusions, at least implicitly, represent the writer's opinions about the Complainant. Those opinions therefore constitute the personal information of the complainant pursuant to paragraph (viii) above.

[13] On the first issue, therefore, I conclude that the Department did disclose the personal information of the Complainant to the Town.

(2) Was the disclosure contrary to the ATIPPA?

[14] Under the *ATIPPA*, personal information in the custody or control of a public body may only be disclosed in the specific circumstances set out in section 39 of the *Act*, which reads:

39. (1) A public body may disclose personal information only

- (a) in accordance with Parts II and III;*
- (b) where the individual the information is about has identified the information and consented to the disclosure in the manner set by the minister responsible for this Act;*
- (c) for the purpose for which it was obtained or compiled or for a use consistent with that purpose as described in section 40;*
- (d) for the purpose of complying with an Act or regulation of, or with a treaty, arrangement or agreement made under an Act or regulation of the province or Canada;*
- (e) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information;*

- (f) *to an officer or employee of the public body or to a minister, where the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the officer, employee or minister;*
- (g) *to the Attorney General for use in civil proceedings involving the government;*
- (h) *for the purpose of enforcing a legal right the government of the province or a public body has against a person;*
- (i) *for the purpose of*
 - (i) *collecting a debt or fine owing by the individual the information is about to the government of the province or to a public body, or*
 - (ii) *making a payment owing by the government of the province or by a public body to the individual the information is about;*
- (j) *to the Auditor General or another person or body prescribed in the regulations for audit purposes;*
- (k) *to a member of the House of Assembly who has been requested by the individual the information is about to assist in resolving a problem;*
- (l) *to a representative of a bargaining agent who has been authorized in writing by the employee, whom the information is about, to make an inquiry;*
- (m) *to the Provincial Archives of Newfoundland and Labrador, or the archives of a public body, for archival purposes;*
- (n) *to a public body or a law enforcement agency in Canada to assist in an investigation*
 - (i) *undertaken with a view to a law enforcement proceeding, or*
 - (ii) *from which a law enforcement proceeding is likely to result;*
- (o) *where the public body is a law enforcement agency and the information is disclosed*
 - (i) *to another law enforcement agency in Canada, or*

- (ii) *to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority;*
 - (p) *where the head of the public body determines that compelling circumstances exist that affect a person's health or safety and where notice of disclosure is mailed to the last known address of the individual the information is about;*
 - (q) *so that the next of kin or a friend of an injured, ill or deceased individual may be contacted;*
 - (r) *in accordance with an Act of the province or Canada that authorizes or requires the disclosure; or*
 - (s) *in accordance with sections 41 and 42.*
- (2) *The disclosure of personal information by a public body shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.*

[15] The Department submits that the information in question was disclosed under section 39(1)(c), that is, for a purpose consistent with the purpose for which it was obtained. The expression "consistent purpose" is further defined in section 40 of the *ATIPPA* in the following way:

40. *A use of personal information is consistent under section 38 or 39 with the purposes for which the information was obtained or compiled where the use*
- (a) *has a reasonable and direct connection to that purpose; and*
 - (b) *is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

[16] The second issue, then, can be re-stated in this way:

- What was the purpose for which the information in question was obtained?
- Was that information disclosed to the Town for a purpose consistent with the purpose for which it was obtained?

[17] These questions have been considered on numerous occasions in other jurisdictions, including Ontario, where the applicable legislative provisions are virtually identical to our own. For example, a 1995 Privacy Investigation Report dealt with circumstances very similar to those in our present case. A complainant had been involved in an appeal to the Ontario Municipal Board relating to a zoning matter in a particular town. Subsequently that individual wrote a letter of complaint about the Municipal Board to the Ministry of Municipal Affairs. The Ministry disclosed the complaint letter to the Municipal Board and to the town. On investigation, Assistant Commissioner Cavoukian found that the information disclosed was personal information, but that it had been obtained for the purpose of dealing with the complaint. The Assistant Commissioner further stated:

It is also our view that in order for a complaint to be fairly and properly dealt with, the person complained about must be advised of what they are accused of, and by whom, to enable them to address the validity of the complaint.

Therefore the Assistant Commissioner concluded that the information had been disclosed for a consistent purpose, for the proper handling of the complaint. In addition, she concluded that an individual in these circumstances might reasonably expect such a disclosure of their personal information, for the proper handling of their complaint. [See Ontario OIPC Investigation Report I94-064P (Ministry of Municipal Affairs), May 2, 1995.]

[18] In a later Ontario case, where a letter of complaint written by a resident to the mayor and council of the Township of Atikokan was discussed at a public meeting of council and later quoted in the local newspaper, the investigating officer commented:

It is also clear that the complainant submitted his letter of complaint to the mayor and council for the specific purpose of having the complaint addressed. In my view, it is not reasonable for a complainant to file a letter of complaint to be addressed by council and expect the complaint to be dealt with behind closed doors in an anonymous fashion.

The investigator concluded that the information had been disclosed for the original purpose for which it had been compiled. [See Ontario OIPC Privacy Complaint Report MC-040027-1 (Township of Atikokan), June 28, 2005.]

[19] A recent Ontario case involved a complaint written to the Minister of Children and Youth Services, about the conduct of staff at a Children's Aid Society. The letter was forwarded to the CAS, and the complainant viewed this as improper disclosure. The investigator stated, in his report, that:

...in my view, an individual writing a letter to a Minister for a government should possess an implicit understanding, at the time the letter is sent, that the Minister may contact other parties in order to provide a response. More importantly, where a letter contains allegations of impropriety, and requests that the Minister investigate, there should be an implicit understanding by the individual that the contents of the complaint (i.e. the letter in this instance) may be disclosed to the party that is the subject of the complaint. Without having been provided with the letter, the subject of the complaint would not have the opportunity to respond to the allegations that may have been raised.

In my view, to arrive at any alternate conclusion would unreasonably limit the ability of government institutions to respond to letters of complaint received from members of the public.

[See Ontario OIPC Privacy Complaint Report PC-050014-1 (Ministry of Children and Youth Services), August 2, 2006.]

[20] In my view the observations and conclusions in the above-cited passages are appropriately applied to the present case. First, the information in question was obtained by the Department from the Complainant when he wrote the letter of complaint. On review of the Complainant's letter it is plain that he wrote it not merely to vent his views, but for the specific purpose of requesting the Department to resolve his complaint. Second, I am satisfied that, given the nature of the complaint, there was no way that the Department could investigate or address it without disclosing both the details of the complaint and the identity of the complainant to the Town. Thus the disclosure at the time of the investigation was made for the original purpose for which the information was obtained. Therefore it was justified under section 39(1)(c) of the *ATIPPA*.

[21] The Department also disclosed the Complainant's personal information to the Town when it copied the Town on the letter of response to the Complainant following the investigation. Given that the Department stands in a supervisory role over municipalities, and given that it was part of the Department's statutory responsibility to conduct the investigation, it was necessary that the Department notify the Town of the results of its investigation. As stated by the Department, in

such circumstances the other party has a right to know the outcome. For these reasons, I conclude that the disclosure of the Complainant's personal information by copying the letter of response to the Town was a disclosure for a consistent purpose under section 40 of the *ATIPPA*, because it was reasonably and directly connected to the purpose of dealing with the original complaint, and was necessary for performing the Department's statutory duty of investigating and resolving complaints.

[22] Although I am satisfied that the Department acted reasonably and appropriately in its approach to this matter, there remains one aspect to be addressed, and that is the question raised by section 39(2) of the *ATIPPA*. Was the disclosure limited to the minimum amount of information necessary to accomplish the purpose? For the most part, on review of the details of this matter I am satisfied that it was. However, the Department sent the letter dated 14 February 2008 to the Complainant via fax, and the Complainant's fax number was included on the face of the letter, as part of the Complainant's address. Consequently the fax number was disclosed to the Town. It may seem a small point, since it appears that the Complainant commonly used his fax for correspondence, and indeed the Town may have already possessed his fax number. However, the disclosure of the Complainant's fax number to the Town was not necessary for the purpose of dealing with the complaint, and could easily have been removed from the copy of the letter.

[23] There is one final matter that I wish to address in this Report. I have concluded that the Complainant wrote to the Department for the specific purpose of having his complaint addressed and resolved. I have also concluded that, in order to do so, it was necessary in this particular case for the Department to disclose some of the Complainant's personal information to the Town. I have agreed with the conclusion expressed in the Ontario cases cited above, that when a person writes to a public body for such a purpose, he or she ought to understand that it may be necessary for the public body to disclose personal information about the complainant to other parties, particularly to the person who is the subject of the complaint. Nevertheless, it is clear that in the present case, the Complainant did not necessarily understand it that way – indeed, his letter to the Department was headed “private and confidential.” It may well be that this sort of misunderstanding is shared by other people who write letters of complaint to public bodies.

[24] In some cases, of course, a public body will be able to thoroughly investigate and deal with a complaint without disclosing the identity of the complainant or any other personal information. That is always the preferred course, as limitations on the disclosure of personal information are at the heart of the *ATIPPA* privacy provisions. Therefore a public body should always strive to limit the disclosure of personal information to the minimum necessary to accomplish its purpose, as section 39 of the Act requires.

[25] However, in many cases it will be apparent that although the individual has written to a public body with some expectation of confidentiality, it may not be feasible to address the complaint while at the same time preserving confidentiality. If that is the case, the public body should notify the individual that in order to proceed, it may be necessary to disclose the details, including the identity of the complainant, to the party about whom the complaint was made or to others, as the situation might require.

[26] Depending on the circumstances, it might be quite feasible to provide such notification by letter, fax, e-mail or even telephone. The individual is then at least forewarned, and can make an informed decision whether or not to consent to such disclosure in order to pursue the complaint. For example, in a recent Ontario case, when it was discovered that there was some confusion about the process to be followed when a matter was brought to a town council, the town adopted a form letter, to be sent to all individuals making written requests or submissions. The letter advises the writer of the process to be followed, including the disclosure of details, possibly including personal information, at public council meetings. [See Ontario OIPC Privacy Complaint Report MC-050015-1 (Town of Cochrane), January 13, 2006.]

[27] It seems to me that adopting some similar measure would have the effect of forestalling potential uncertainty about the disclosure of personal information, especially given that this particular Department receives a great many requests, submissions and complaints from residents. Of course, it would be for the Department, or any other public body in a similar position, to decide what specific measure to implement in order to suit their particular circumstances. It would however serve the purposes of the *ATIPPA* in helping to safeguard and protect the privacy of individuals to the greatest possible extent.

V CONCLUSIONS

[28] I have reached the following conclusions based on the results of my investigation:

- (1) The information disclosed by the Department was the personal information of the Complainant as defined in section 2(o) of the *ATIPPA*.
- (2) With one exception, the information was disclosed in accordance with section 39 of the *ATIPPA*.

VI RECOMMENDATIONS

[29] For the reasons set out above, I recommend that:

- (1) the Department review its policies and practices with respect to inquiries, investigations and outgoing correspondence, in order to further ensure that the disclosure of personal information is limited to the minimum required to accomplish its legitimate purposes;
- (2) in circumstances where it appears that an individual has written to the Department with some expectation of confidentiality, the Department should wherever possible advise the individual that it may be necessary to disclose personal information, and to whom, before actually doing so.

[30] Dated at St. John's, in the Province of Newfoundland and Labrador, this 26th day of September, 2008.

E. P. Ring
Commissioner