



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report P-2017-002

June 8, 2017

Town of Gander

### Summary:

The Complainant submitted a privacy complaint against the Town of Gander (the “Town”) under the *Access to Information and Protection of Privacy Act, 2015* (the “ATIPPA, 2015”). The complaint was in relation to the Town’s decision to provide the Complainant’s conflict of interest complaint made against a Town Councillor (the “Councillor”) to the Town Council for review without first severing the Complainant’s name. Subsequently, the Town Councillor decided to speak to the media regarding the conflict of interest complaint and in the course of doing so, indirectly exposed the Complainant’s identity to the public. The Commissioner determined that the Town breached the Complainant’s privacy by using his information in contravention of section 66(2) (use of personal information) of the *ATIPPA, 2015*. This breach was exacerbated by the Town’s failure to incorporate policies and procedures and to educate staff and Council about how to best protect personal information from improper use or disclosure. The Commissioner made recommendations to the Town relating to its need for greater caution when handling personal information in similar circumstances in the future.

### Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A 1.2, ss. 64(1)(a), 66(1), 66(2), 73(2), 74(1), and 76.

### Other Resources:

OIPC Reports [P-2017-001](#), and [P-2016-001](#) at <http://www.oipc.nl.ca>. [ATIPP Guide for Municipalities \(October 2015\)](#).

## I BACKGROUND

- [1] The Complainant filed a privacy complaint with this Office against the Town of Gander (the “Town”) pursuant to section 73(1) of the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)*. This Complainant had previously filed a complaint with the Town of Gander alleging that a Town Councillor (the “Councillor”) was in a conflict of interest. The allegation was that the Councillor, who was also an employee of a particular company, had voted in favour (along with other members of Council) of a motion which had financial implications for that company, although the Councillor did not stand to benefit personally.
- [2] The Complainant believed that the Town had provided the Councillor with his name, thereby identifying him as the individual who had made the conflict of interest complaint. The Complainant stated that there was no reason for his name to be provided to the Town Council, including the Councillor who was the subject of the complaint, in order to address the concerns it highlighted. The Complainant stated that instead, it could have been provided to Council for review and response with his name removed. The Complainant acknowledged that outside of the municipal context he has had a contentious history with the Councillor.
- [3] The Complainant concluded that the Councillor had been given a copy of his complaint without removing his name because the Councillor had given a print interview to a local newspaper about the matter. The Complainant alleges that the information provided by the Councillor in that print interview indirectly identified him as the person who made the conflict of interest complaint. The Complainant indicated that he had contacted the Town (including the Mayor) about his concerns but had received no response.

## II PUBLIC BODY’S POSITION

- [4] The Town confirmed the Complainant’s belief that his conflict of interest complaint had been provided to Council, including the Councillor against whom the complaint had been made, without removing the Complainant’s name. The Town stated that it was its practice to

circulate all complaints to Council through its internal mail system without removing the name of any complainants. No further information was provided to address any concerns regarding the Complainant or the Councillor's press interview regarding the matter.

- [5] Upon further inquiry from this Office, the Town Clerk who was responsible for accepting the conflict of interest complaint and sending it to Council indicated he had not previously been aware of any contentious history between the Complainant and the Councillor, only finding out when the Councillor informed him after being advised of the complaint.
- [6] The Town also stated that it was not immediately aware that the Councillor had made the issue public. It noted that it learned of the Councillor posting about the matter to his social media and was informed by this Office that the Councillor had spoken to the media, having given a print interview to a local newspaper.
- [7] The Town indicated that in future it would amend its practice for handling complaints to incorporate redacting the name of any complainant before circulating the complaint to Town Council. It was very transparent in acknowledging that there are currently no procedures or policies in place regarding the protection of personal information and privacy when dealing with the media and noted that it is in the process of modifying its Communications Policy and this will include a "privacy aspect." The Town was also commendably open to suggestions or templates to assist in this process.

### III DISCUSSION

- [8] As informal resolution could not be achieved, the complaint proceeded to formal investigation pursuant to subsection 74(2) of the *ATIPPA, 2015*. At issue is whether the Town's decision to provide the conflict of interest complaint to Council without redacting the Complainant's identity constituted an improper use of personal information contrary to section 66(2) of the *Act*, thereby breaching the Complainant's privacy.

[9] Section 66(2) of the *ATIPPA, 2015* states:

*66(2) The use 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 used.*

[10] The Town did not specifically rely on a subsection of 66(1) of the *ATIPPA, 2015* to argue its position, however the Town's practice was that complaints made to and against it should be provided in full to Council for review and response. The question to be assessed is whether providing the complaint to Council, including the identity of the person making the complaint, was necessary in these circumstances to accomplish the purpose for which it was used; i.e. to address the subject of the complaint itself.

[11] The Complainant argues that this particular complaint alleging a Town Councillor to be in a conflict of interest required an objective assessment, and there was no need for members of Council to know the identity of the Complainant. He noted,

*The only thing they need to know, are the details of the complaint. The actual complaint should have or could have been presented to Council in its original form with my name redacted. The complaint provided adequate information for Council to determine if any action needed to be taken on the complaint. Naming me was not necessary.*

The Complainant went on to note that the Town should have known that disclosing his identity, "would cause and has caused undue harm and stress to me."

[12] In these circumstances, I agree that Council could have reviewed the conflict of interest complaint objectively without needing to know the identity of the person making it. Therefore, the Town has not met its obligation under section 66(2) of the *ATIPPA, 2015* to limit use of personal information to only that which is necessary to accomplish its goal. In providing the identity of the Complainant to Council, the Town breached his personal privacy.

[13] The Complainant alleges that providing his complaint, including his identity, to members of Council led to a broader breach of his personal information when the Councillor at the center of the conflict of interest complaint decided to speak publicly about the matter. While the Councillor did not directly identify the Complainant to the media, he did provide specific

details regarding his previous relationship and interactions with the Complainant and his belief that he was “targeted” by the Complainant in a print interview with a local publication. The details provided by the Councillor could reasonably have led to public disclosure of the identity of the Complainant. As a result, the Councillor’s interview exacerbated the breach of the Complainant’s personal information by the Town, and opened the Complainant up to further exposure.

[14] The Town acknowledged that it does not have policies and procedures in place, nor training for staff and Council, to guide protection of personal information and privacy. While the Councillor appeared to act independently of the Town in speaking to the media about the matter, he could not have indirectly exposed the Complainant and exacerbated the breach of the Complainant’s personal information if the Town had not previously identified the Complainant. Additionally, section 64(1)(a) of the *ATIPPA, 2015* states that a public body must take reasonable steps to ensure personal information in its custody and control is protected against theft, loss and unauthorized collection, access, use or disclosure. In failing to properly inform and train staff and Council about how to handle personal information, or ensuring policies and procedures were in place to address these issues, the Town has failed to meet its legislative obligations.

[15] There may be instances when it would be necessary to reveal the identity of a person making a complaint to either or both its subject and those reviewing it in order to properly respond to the matter. This would arise, for example, when the nature of the complaint necessitates knowledge of who has made it by the party being complained about in order for that party to be able to make full answer and defense. However, each case should be looked at individually with section 66(2) in mind; i.e. examining whether use of personal information is necessary for the purpose of review and response. Additionally there is arguably a vested public interest in assuring citizens that they can hold government, local or otherwise, to account without concern that their identity will be unnecessarily exposed. In this case the issue is an objective one based on facts, and the identity of the Complainant making the allegation is irrelevant.

[16] The [ATIPP Guide for Municipalities](#) (the “Guide”) offers assistance to municipalities on how to deal with privacy issues and specifically in determining when and how it might be appropriate to collect, access, use and disclose personal information. The first section of the Guide covers the types of information which should routinely be considered public information. The second section deals with privacy issues. While in most cases the identity of a person lodging a property complaint should not be disclosed, other types of complaints may require such disclosure. For example, if an allegation of harassment is made against a member of Council or staff, it is not possible for the subject of the complaint to fully and adequately respond without knowing the identity of the complainant and the details of the allegations.

[17] The specific issue of addressing a councillor’s conflict of interest is commented upon at page 19 of the Guide, but it should be noted that in the example given, determining one’s conflict of interest with another party will necessitate knowing the identity of the other party, whereas the conflict of interest complaint at the center of this matter did not involve any alleged conflict of interest with the Complainant, therefore the Complainant’s identity was unnecessary in reviewing and responding to the allegation.

#### IV CONCLUSION

[18] In summary, I conclude that:

- The Complainant’s personal information was used by the Town Council in a manner inconsistent with section 66(2) of the *ATIPPA, 2015*; and
- This breach of the Complainant’s personal information was exacerbated when the Councillor spoke to media, giving details of the Councillor’s relationship to the Complainant that were likely to have identified the Complainant to some members of the public.

## V RECOMMENDATIONS

[19] As noted above, the Town has acknowledged relevant shortcomings and commendably committed to necessary remedial measures. Under the authority of section 76(2) of the *ATIPPA, 2015*, I recommend that the Town take steps:

- in similar circumstances in the future to ensure complaints are evaluated to determine whether disclosure of a complainant's identity is permitted prior to any distribution of such information to Town staff or Council who need to know, and to use a procedure which will mitigate against inadvertent disclosure of personal information to the public or other staff, accomplishing the purpose of the disclosure with the minimum amount of personal information necessary, in accordance with sections 66(2) and 68(2);
- to develop and put into effect policies and procedures for the protection of personal information in accordance with *ATIPPA, 2015*. This should include a review of the Town's Communications Policy;
- to develop a policy and procedure regarding how to deal with breaches of personal information and privacy, including how to respond to and manage a breach;
- to provide *ATIPPA, 2015* training for all Town staff and Councillors; and

[20] As set out in section 78(1)(b), the head of the Town must give written notice of his or her decision with respect to these recommendations to the Commissioner and to any person who was sent a copy of this Report (in this case the Complainant) within 10 business days of receiving this Report.

[21] Dated at St. John's, in the Province of Newfoundland and Labrador, this 8<sup>th</sup> day of June, 2017.

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