



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report P-2017-004

September 18, 2017

### Town of South Brook

#### Summary:

The Complainant submitted a privacy complaint against the Town of South Brook (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 paper copies of a text message to all Councillors attending a privileged meeting of the Town Council, without first severing the Complainant’s cellphone number. Subsequently, one of the Town Councillors (the “Councillor”) decided to include the text message in a newsletter discussing Town business that he produced and sent to all residents, thereby exposing the Complainant’s cellphone number (and indirectly his identity) to the public. The Commissioner determined that the Town’s use of the Complainant’s personal information was in keeping with section 66 of the *ATIPPA, 2015*, but the Town failed to take reasonable steps to ensure this personal information in its custody or control was adequately protected against unauthorized disclosure in contravention of section 64(1) (protection of personal information). The Town failed to take steps to contain copies of the text, to have effective policies and procedures, and to educate staff and Council about how to best protect personal information from improper disclosure. This resulted in a breach of the Complainant’s personal information by the Councillor. The Town also failed to disclose this breach to the Commissioner in contravention of section 64(4). The Commissioner made recommendations to the Town relating to its need for a privacy policy that is enforced, education and training for staff and Councillors, as well as a process for handling breaches.

#### Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A 1.2, ss. 64(1), 66(1), 66(2), 64(1), 64(4), 73(2), 74(1), and 76.

#### Other Resources:

OIPC Reports [P-2017-002](#), [P-2017-001](#), and [P-2016-001](#).

## I BACKGROUND

- [1] The Complainant filed a privacy complaint with this Office against the Town of South Brook (the “Town”) pursuant to section 73(1) of the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)*.
- [2] The Complainant believed that a text message sent from his cellphone to the Mayor’s cellphone had been produced in paper copy form and provided to all Town Councillors in a privileged meeting for discussion. The Town had provided the Council, including the Councillor the Town believed was referenced in the text message (the “Councillor”), with a copy of the text without redacting the Complainant’s cellphone number, which indirectly identified the Complainant. The Complainant stated that there was no reason for his cellphone number to have been provided to the Town Council, including the Councillor.
- [3] The Complainant became aware that the Councillor had been given a copy of the text without removing his cellphone number because the Councillor subsequently created and produced a newsletter discussing Town business that published a copy of the Complainant’s text and cellphone number, and this newsletter was then sent to all residents of the Town. The Complainant alleges that the information provided by the Councillor in that newsletter indirectly identified him, breaching his privacy. He stated that he has received telephone calls, “all hours in the day and night continuously due to the publication of my phone number.”
- [4] Once this file moved to formal investigation, the Complainant also indicated that he had made a complaint to the Town in relation to this alleged breach of his personal information prior to the complaint to this Office, but had not received any response.

## II PUBLIC BODY’S POSITION

- [5] The Town confirmed the Complainant’s belief that the text had been provided to Council in paper form, including to the Councillor, without removing the Complainant’s cellphone number. The Town indicated it decided that it was necessary to use the Complainant’s

personal information in this manner in order to properly address the issues raised by the text. The Town also confirmed it had made no efforts to inform Council that the copies of the text were to be kept private, specifically confirming it had not collected the copies at the end of the meeting, nor provided any oral or written warning that this information was meant for internal purposes only and therefore not to be shared outside that setting.

[6] The Town initially indicated it had no involvement with the newsletter written and distributed by the Councillor. Later, while our investigation was ongoing, the Town independently decided to send its own letter to all residents distancing itself from the Councillor's newsletter by stating it had been "written and distributed without Council's knowledge or permission" and that its content, "does not reflect the opinion of Council."

[7] The Town indicated in its initial representations to this Office that there had been "no contact/correspondence between the Town of South Brook and the Complainant regarding this issue." It failed to note or provide a copy of the Complainant's complaint to the Town, predating his complaint to this Office, alleging a breach of his privacy had occurred. This was later disclosed by the Town, and subsequently the Complainant, during the review process. A town employee in responding to this Office, indicated that to the best of her knowledge there had been no investigation of this complaint. The Mayor was asked directly for a response regarding his failure to disclose the initial complaint that was made directly to the Town and the particulars of the Town's response to that initial complaint. He did not respond to provide any further information regarding what, if any, actions the Town had taken to address the original complaint.

[8] Additionally, the Town acknowledged that there had not been any privacy education or training of staff and Council, nor did the Town have any familiarity with their obligations under section 64 (including the obligation to notify this Office of a breach). Initially the Town also indicated it does not have any policies or procedures related to privacy and the protection of personal information. However, during formal investigation, a Privacy Policy that was found by an employee in a manual was submitted to this Office, but it contained no indication of being in force, nor any time, date or signature to suggest it is an active policy of

the Town. It was acknowledged by the employee who provided a copy to this Office that staff of several years were unaware of it, and current staff have not been provided copies.

### III DISCUSSION

[9] 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 text, including the Complainant's cellphone number, to Council without redaction constituted an improper use of personal information contrary to section 66(2) of the *Act*, thereby breaching the Complainant's privacy.

[10] 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.*

[11] The Town did not specifically rely on a subsection of 66(1) of the *ATIPPA, 2015* to argue its position, however the Town stated it had determined that it was necessary to use the Complainant's personal information in this manner in order to properly address issues raised by the text. The question to be assessed then is whether providing the text to Council, including the cellphone number of the Complainant, was necessary in these circumstances to accomplish the purpose for which it was used; i.e. to address the content of the text itself.

[12] The Complainant argues that the Town should have handled this matter in an alternate manner. It is not in this Office's jurisdiction to direct how the Town carries out its business. Rather, this Office is solely concerned with whether the Town's actions were in compliance with the *ATIPPA, 2015*.

[13] In a recent report, P-2017-002, I dealt with a similar determination involving section 66(2). In that case I discussed whether and how much information about a complaint and the party making it were necessary for Council to access and use in order to address the

complaint itself. I noted then that some instances will require more detail than others, including personal information, in order to accomplish the intended purpose.

[14] While the Town provided no specific arguments for why it was necessary for it to use the Complainant's cellphone number to address the content of the text, I am satisfied, based on the contextual information provided during this investigation, that in this particular situation the question of where and from whom the text originated was sufficiently tied to the Town's investigation of its content. Use of the text at the privileged meeting of Council, without redaction of the Complainant's cellphone number, was consistent with section 66 of the Act and therefore that usage was not a breach of the Complainant's personal information.

[15] The Councillor appears to have acted independently of the Town in publishing and distributing the newsletter containing the text to residents, including the Complainant's cellphone number. While the Town has subsequently taken steps to publicly distance itself from these actions, it is unclear whether it intends to or has taken any measures to address the obligations it and its staff and Councillors have with regard to protecting personal information in its custody or control as set out in section 64(1) of the *ATIPPA, 2015*.

[16] Section 64(1) of the *ATIPPA, 2015* states:

*64 (1) The head of a public body shall take steps that are reasonable in the circumstances to ensure that*

- (a) personal information in its custody or control is protected against theft, loss and unauthorized collection, access, use or disclosure;*
- (b) records containing personal information in its custody or control are protected against unauthorized copying or modification; and*
- (c) records containing personal information in its custody or control are retained, transferred and disposed of in a secure manner.*

...

*(4) Where the head of a public body reasonably believes that there has been a breach involving the unauthorized collection, use or disclosure of personal information, the head shall inform the commissioner of the breach.*

[17] The Town's shortcomings in not making clear to Councillors that the text, and the Complainant's personal information it contained, were not to be shared outside the privileged meeting demonstrate a failure of the Town to meet its obligations under section 64(1). Copies of the text should have been collected at the conclusion of the privileged meeting, with Councillors being reminded that this information was not to be disclosed outside the meeting. Another appropriate step may have been to include an "internal use only" proviso on the copies it distributed to Councillors. No such steps were taken.

[18] The Town also acknowledged that staff and Council had received no education or training in the protection of personal information. As well, despite initial denials of any privacy policies or procedures, the policy eventually supplied by the Town lacks any evidence of being in force and does not appear to have been communicated to staff and Council. In the absence of any such efforts, the Town failed to comply with section 64(1).

[19] While the Town has moved to distance itself from these actions, this Office finds that its failure to meet its legislative obligations under section 64(1) resulted in a breach of the Complainant's privacy. Had the Town been able to demonstrate it had taken all reasonable steps in the circumstances, it may have been deemed to be in compliance with its obligations under section 64(1) of the *ATIPPA, 2015*.

[20] Finally, the Town failed to meet its obligations under section 64(4) of the *Act*, which states:

*64 (4) Where the head of a public body reasonably believes that there has been a breach involving the unauthorized collection, use or disclosure of personal information, the head shall inform the commissioner of the breach.*

[21] Given the Town's awareness of the Councillor's newsletter and content, and the Complainant's initial privacy complaint to it, it was reasonable for it to have concluded that there had been a breach involving an unauthorized disclosure of personal information. The Town was therefore obligated to report this breach to my Office. Failure of the Town to be aware of its statutory obligations regarding breaches of privacy likely contributed to its non-

compliance, as did its failure to complete an internal investigation to deal with the Complainant's original complaint to the Town.

#### IV CONCLUSION

[22] In summary, I conclude that:

- The Complainant's personal information was used by the Town Council in a privileged meeting in a manner consistent with section 66(2) of the *ATIPPA, 2015*;
- A breach of the Complainant's privacy occurred when the Councillor produced a newsletter discussing Town business that presented the copy of the Complainant's text and cellphone number. The Councillor improperly disclosed the Complainant's personal information when he sent this newsletter to all residents of the Town indirectly identifying the Complainant to the public;
- The Town did not (a) require or take steps to ensure that copies of the text were not to be shared outside the privileged meeting; (b) ensure staff and Council understood their obligation to protect privacy in accordance with the *ATIPPA, 2015*; and (c) have an active privacy policy that was communicated and supplied to staff and Council. Failure of the Town to take these reasonable steps amounts to a breach of its obligations under section 64(1) of the *ATIPPA, 2015*; and
- The Town's failure to report this breach to the OIPC when it was first informed of it by the Complainant is a breach of section 64(4) of the *ATIPPA, 2015*. This was exacerbated by the Town's response in its initial representations to this Office, and its failure to investigate when the complaint was first made to the Town.

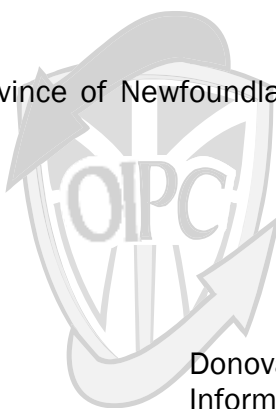
#### V RECOMMENDATIONS

[23] Under the authority of section 76(2) of the *ATIPPA, 2015*, I recommend that the Town take steps to:

- put into effect policies and procedures for the protection of personal information in accordance with the *ATIPPA, 2015*. This should include putting into force its privacy policy and communicating and providing copies of this to staff and Council;
- 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; and
- provide *ATIPPA, 2015* training within 30 days for all Town staff and Councillors and to offer this training in the future at least once per fiscal year.

[24] 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.

[25] Dated at St. John's, in the Province of Newfoundland and Labrador, this 18th day of September, 2017.



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