



**P-2011-001**

**July 14, 2011**

**Summary:**

The Complainant submitted a Privacy Complaint alleging that a Town had disclosed his personal information when his name appeared on the agenda for a public meeting regarding a letter that had been written to him by the Town Manager, and furthermore that his personal information was also disclosed when his name was included in the minutes of that meeting and again when the letter itself was tabled for discussion at a public Council meeting. In addition, as the minutes of a public meeting and all documents tabled for discussion at a public meeting must be made available for public viewing in accordance with section 215 of the *Municipalities Act*, the Complainant maintains that his personal information continues to be disclosed, as the letter that was written to him and the minutes of the meeting continue to be available for public viewing. The Commissioner found that while it was reasonable in the circumstances to share the Complainant's personal information with the Councillors, the personal information did not need to be tabled or discussed at the public meeting, and thus the Town had breached section 39 of the *ATIPPA*. Such a disclosure of personal information was not the minimum necessary to accomplish the purpose for which it was disclosed. It was the Commissioner's view that since the Councillors already knew the details, the letter could have been discussed and presented at the public meeting in a de-identified manner, and the minutes and the agenda could have also been prepared with the personal information severed. This would have allowed the Town to conduct its necessary business while still protecting the privacy of the Complainant. The Commissioner found that although the *Municipalities Act* required certain documents to be made available for public viewing, it was silent with respect to the disclosure of personal information that might be contained in these documents. Therefore, it was the Commissioner's view that the requirements of both the *Municipalities Act* and the *ATIPPA* could be met if documents containing personal information were severed to remove the personal information prior to being tabled at a public meeting. The Commissioner also found that minutes and agendas for public meetings could also be prepared in a de-identified manner, unless the disclosure was necessary as per section 39(1)(c) and 40(b). Where this practice was not reasonable in the circumstances of a particular situation, the Commissioner concluded that personal information should be discussed at a privileged meeting of Council.

**Statutes Cited:** *Access to Information and Protection of Privacy Act*, S.N.L. 2002 c. A-1.1, as amended, ss. 2(o), 39(1)(d)(f), 39(2); *Municipalities Act*, S.N.L.1999 c. M-24, as amended, ss. 213, 215(1).

**Authorities Cited:** Newfoundland and Labrador OIPC Reports P-2009-002, A-2009-002, P-2008-004, 2007-003.

**Other Resources:** [Municipalities Frequently Asked Questions](http://www.justice.gov.nl.ca/just/info/municipalities_faq.pdf), Department of Justice, Government of Newfoundland and Labrador, found at:  
[http://www.justice.gov.nl.ca/just/info/municipalities\\_faq.pdf](http://www.justice.gov.nl.ca/just/info/municipalities_faq.pdf)



## I BACKGROUND

[1] On March 9, 2010, the Office of the Information and Privacy Commissioner received a Privacy Complaint from an individual (the “Complainant”) who alleged that the Town disclosed his personal information contrary to the protection of privacy provisions contained in Part IV of the *Access to Information and Protection of Privacy Act* (the “ATIPPA” or “Act”).

[2] In particular, the Complainant alleged that the Town improperly disclosed his personal information when he was named in the agenda of a public meeting of Council under the heading “Incoming Correspondence.” The Complainant further alleged that the Town improperly disclosed his personal information when it tabled a letter containing his personal information for discussion at a public meeting of Council.

[3] The relevant agenda item for the March 8, 2010 public meeting of Council refers to the Complainant as follows:

4) *Copy of letter to [Complainant’s name] re conduct*

Although the Complainant did not make reference to them in his complaint, the adopted minutes of the March 8, 2010 public meeting of Council also refer to the Complainant as follows:

4) *Copy of letter written to [Complainant’s name] by the town manager regarding his conduct in the town office.*

[4] These references to a copy of a letter regarding the Complainant’s conduct relate to an incident, which the Town Manager alleged took place in the Town Office on February 9, 2010. The day after the alleged incident, February 10, 2010, the Town Manager wrote a letter to the Complainant referring to his alleged conduct in the Town office (the “letter”). This letter was copied to the “Town Council of [name of town].” At issue in this Report is the handling of the letter by the Town after it was sent to the Complainant.

[5] I would like to note that given the circumstances of this case, the name of the town involved has been deliberately omitted in order to further protect the identity of the Complainant.

### **The Town's position**

[6] It is the Town's position that it was necessary to disclose the letter to the members of the Town Council in order to bring them "up to date" with respect to the issue dealt with in the letter by placing the letter on the agenda. Further, the Town states that the minutes of that meeting do not disclose personal information, and that the letter was tabled as common practice to make Council aware of the measures taken to deal with the issue outlined in the letter.

### **The Complainant's position**

[7] The Complainant's position can also be simply laid out: at no time did he consent to the disclosure of his personal information, therefore it was, in his opinion, improperly disclosed when it was placed on the agenda of the March 8, 2010 public meeting of Council and when it was tabled for discussion at that meeting. The Complainant's main concern was that the Town's decision to table and discuss the letter at the March 8 public meeting of Council had the result of making his personal information publicly available to anyone who attended the meeting. Furthermore, his personal information continues to be available to anyone who asks to inspect the tabled letter or the adopted minutes of the March 8 public meeting of Council in the Town's office, as required by subsections 215(1)(a) and (m) of the *Municipalities Act*.

[8] Section 215(1) (inspection of documents) of the *Municipalities Act* reads as follows:

*215(1) The following documents shall be made available by the Council for public inspection during the normal business hours of the Council:*

- (a) adopted minutes of the Council;*
- (b) assessment rolls;*
- (c) regulations;*
- (d) municipal plans;*
- (e) opened public tenders;*
- (f) financial statements;*

- (g) *auditor's reports;*
- (h) *adopted budgets;*
- (i) *contracts;*
- (j) *orders;*
- (k) *permits; and*
- (l) *Rep. by 2000 c16 s2*
- (m) *all other documents tabled or adopted by Council at a public meeting.*

[9] In short, the Complainant's concern was that in bringing the letter to the attention of the Town Council by tabling and discussing it in the March 8, 2010 public meeting of Council, the Town neglected its duties under the privacy provisions in Part IV of the *ATIPPA*.

[10] It should be pointed out that the Complainant did not take issue with the fact that the letter written to him by the Town Manager was copied to the Town Council. It is the Town's subsequent decision to table and discuss the letter in a public meeting of Council that is at issue in this Report.

## II DISCUSSION

### Is the information at issue "personal information"?

[11] The *ATIPPA* defines "personal information" in section 2(o) as "recorded information about an identifiable individual..." and as I indicated in paragraph 69 of my Report A-2009-002, this provision provides a non-exhaustive list of categories of personal information. In the matter at issue here, it is not difficult to determine that the agenda of the March 8, 2010 public meeting of Council and the tabled letter include the Complainant's personal information. In particular, these records contain the Complainant's name and address (section 2(o)(i)), as well as opinions of a person about the Complainant (section 2(o)(viii)).

## Was the Complainant's personal information disclosed?

[12] In Report 2007-003 and Report P-2009-002, both my predecessor and I discussed the issue of what constitutes “disclosure.” In Report 2007-003, my predecessor stated at paragraphs 136-137:

[136] [...] *Black's Law Dictionary, Eighth Edition, defines disclosure as:*

**1. The act or process of making known something that was previously unknown; a revelation of facts...** 2. *The mandatory divulging of information to a litigation opponent according to procedural rules...*

[Emphasis Added]

[13] As already indicated above, the Complainant's personal information was indeed disclosed by the Town. The first disclosure occurred when the letter was circulated to the Council members prior to the meeting. Then, the applicant's personal information was disclosed again in the agenda and when the letter itself was tabled for discussion by Council at that meeting. It is also disclosed in the adopted minutes of the March 8, 2010 meeting of Council. Thus, the Complainant's personal information was disclosed to all Councillors prior to the meeting and again to any Councillor or member of the public: 1) who attended the March 8 public meeting of Council, 2) who read the agenda for the March 8 meeting, and/or 3) who has read the adopted minutes of the March 8 public meeting of Council. Finally, the tabled letter and adopted minutes of Council for the March 8 meeting continue to be available for inspection in the Town's office by any member of the public, as required by sections 215(1)(a) and (m) of the *Municipalities Act*.

[14] While one may question whether there was actually a disclosure if no one (except councillors and Town staff) attended the meeting or saw the letter, agenda or minutes, I think the fact that personal information was placed in the public domain is sufficient to constitute a breach. The number of people who actually see the personal information goes to the seriousness of the breach. In this situation, we are unaware of who may have already seen the Complainant's personal information, but it has clearly been made available to the public under section 215 on the *Municipalities Act* by virtue of its inclusion in the aforementioned agenda, minutes and tabled letter.

## Was the disclosure improper?

[15] The purpose of the *ATIPPA* is set out in section 3 as follows:

3. (1) *The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by*

- (a) *giving the public a right of access to records;*
- (b) *giving individuals a right of access to, and a right to request correction of, personal information about themselves;*
- (c) *specifying limited exceptions to the right of access;*
- (d) *preventing the unauthorized collection, use or disclosure of personal information by public bodies; and***
- (e) *providing for an independent review of decisions made by public bodies under this Act.*

(2) *This Act does not replace other procedures for access to information or limit access to information that is not personal information and is available to the public.*

[Emphasis added]

[16] Section 39 of the *ATIPPA* deals with the disclosure of personal information and reads as follows:

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.*

[17] What is particularly noteworthy about the privacy complaint at issue here is that the Town's application of any pertinent provisions of Part IV of the *ATIPPA* must be considered in the context of the obligations the Town also has under the *Municipalities Act*.



[18] That municipal government in Newfoundland and Labrador is intended to be *transparent* government is clear from a review of sections 213(1) and 215(1) of the *Municipalities Act*. Section 213(1) requires all meetings of a municipal Council to be open to the public (unless declared a privileged meeting) and section 215(1) of the *Municipalities Act* identifies a number of types of documents that municipalities are obliged to make available for public inspection. Adopted Council minutes (section 215(1)(a)) and “all other documents tabled or adopted by Council at a public meeting” (section 215(1)(m)) are among the documents that must be made available for public inspection.

[19] Further, as I pointed out at paragraph 27 of my Report P-2009-002, sections 39(1)(d) and (r) of the *ATIPPA* in fact permit a public body to disclose personal information where the disclosure is permitted or required by another legislative provision. Section 215(1) of the *Municipalities Act* does indeed require certain documents to be made publicly available for inspection, and some of these documents will contain personal information. However, the *Municipalities Act* neither specifies which documents should or should not be tabled at a public Council meeting, nor indicates how the adopted minutes of Council or tabled documents are to be prepared prior to being made available for public inspection in a town office. Thus, the *Municipalities Act* is silent on how a municipality is to proceed if a document which it is required to make available for public inspection (in compliance with section 215(1)) contains personal information, which the municipality has a duty *not* to disclose *except in accordance with the privacy provisions of the ATIPPA*.

[20] Section 39(2) of the *ATIPPA* also requires any disclosure of personal information to be “limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.” To emphasize the importance of a public body engaging in this assessment, it is worth repeating the point I made in paragraph 43 of my Report P-2009-002:

*...when using or disclosing personal information public bodies should give great consideration to the amount of personal information which is actually required to carry out the purpose(s) which the public body is attempting to achieve. If it is possible to carry out those purposes with the use and disclosure of little or no personal information then public bodies should make every effort to act in this manner in accordance with the ATIPPA.*

[21] Turning now to my analysis of the actions of the Town, I begin with the comment that from the perspective of an informed outsider, there does not appear to be anything out of the ordinary in the

Town Manager choosing to bring an unusual incident – a matter that falls outside the day-to-day operations of the Town – to the attention of Council. I accept that the purpose of disclosing the Complainant’s personal information on the agenda and in the public meeting of Council was to bring the alleged incident (and the Town Manager’s actions in relation to the alleged incident) to the attention of Council and to permit discussion of the incident.

[22] However, Council had already been made aware of the letter referring to the incident, as it was copied to all members of Council, and I do not accept that the disclosure of the Complainant’s personal information in the agenda of the Council meeting, in the adopted minutes of Council and in the tabled letter were necessary either for the incident to have been brought to the attention of Council or for the incident to have been discussed by Council.

[23] As I mentioned, while the *Municipalities Act* does indeed require that particular documents be made available for public inspection, it does not specifically require disclosure of personal information. Certainly there are instances where personal information must be made known to Councillors who have to discuss a particular issue and decide how to vote or whether to take action on it or not. However, as was done in this case, the personal information could be made known to the Councillors (and others who reasonably need to know) prior to the meeting, thus negating the need for any personal information to be disclosed in a public meeting. The issue could then be referred to in the agenda and in the minutes in a de-identified manner, either by not using names or identifying details at all (for example, using “a resident” instead of a name) or severing (“blacking out”) all personal information. This is especially true where the document or information is of a sensitive nature. This procedure would allow for meaningful discussion of the issue (as those who “need to know” are aware of the relevant information), thus preserving the public accountability that comes with the discussion of Town business in a public forum while still protecting the personal information of the individual involved. Further, it is my opinion that the requirements of both the *ATIPPA* and the *Municipalities Act* can be satisfied if this practice is followed, as the required documents can be made available for public inspection but will contain no personal information.

[24] Alternatively, while restraint should always be exercised in recommending that a municipality hold a privileged meeting of Council under section 213(1) of the *Municipalities Act*, such a meeting

would have also afforded an opportunity for Council to address the alleged incident referred to in the letter without publicly disclosing the Complainant's personal information at all.

[25] I would also like to briefly mention a document entitled "Municipalities FAQ's" prepared by the ATIPP Office, Department of Justice. This document provides answers to questions frequently asked by municipalities with respect to their duties and obligations under the *ATIPPA* and the *Municipalities Act*. One of the questions that is addressed is correspondence that is received by a town from an individual that becomes part of an agenda package, which is forwarded to Council members. This question echoes comments made by me in Report P-2008-004, and I would like to reproduce the question and answer herein:

*7. How should municipalities handle letters from residents that become part of Council agenda packages, which are forwarded to Council members?*

*Letters from residents normally include personal information, such as name, address, phone numbers, and other information such as details about the health of family members. Under section 213 of the Municipalities Act, meetings of a Council must be conducted in public, except where it is held as a privileged meeting. Under sections 24 and 213 of the Municipalities Act, the public has a right to be present at Council meetings that are conducted in public.*

*If it is the practice of the municipality to hold public meetings, then notice of this practice should be made available to the public. For example, notice may be placed in a brochure and on the municipality's web site, or in publications that residents may refer to when looking up contact information for Council members.*

*When it is not clear that the author expected the information to be made public, the municipality should contact the individual and confirm that it was their intention that the information be disclosed to the public. **Where possible, a severed record or summary of the information inquiry or complaint could be prepared for use at the Council meeting.***

*Where the disclosure of such a letter would clearly be an unauthorized disclosure of the author's personal information but the personal information is needed by Councillors to fully inform their decision-making, the matter could be discussed in a portion of the meeting that is closed to the public (e.g. a 'privileged' meeting). In that case, the letter would not be attached to or distributed as part of the agenda package.*

[Emphasis added]

[26] While this excerpt deals specifically with correspondence received by a town from an individual, it follows that the practices in bold above apply equally to correspondence sent to an individual by a town. Alternately, as I have suggested, in lieu of a privileged meeting, where personal information is required by Councillors, unsevered correspondence could be provided to Councillors for their review prior to the meeting and then severed copies could be included in the agenda packages for discussion at a public meeting.

[27] Finally, sections 39 and 40 allow a public body to disclose personal information where doing so is necessary for performing its statutory duties or for operating a legally authorized program of the public body. Thus, in some situations, severing of personal information will be unnecessary. For example, the issuance of building permits and such may, for various reasons, necessitate the disclosure of personal information. However, even in these circumstances, a public body still must only disclose the minimum amount of personal information necessary to achieve its purpose, in accordance with section 39(2).

### III CONCLUSION

[28] Any disclosure of personal information by a municipality at a public meeting of Council must be done in accordance with the provisions of section 39(1) of the *ATIPPA*, and even if such a disclosure is authorized by section 39(1), adherence to section 39(2) will ensure that only the minimum amount of personal information necessary for the purpose will be disclosed. When disclosing personal information, I urge public bodies to be cognizant of the reason for doing so. If the particular goal or purpose can be achieved without the disclosure of personal information, then public bodies should refrain from making the disclosure. This will hopefully clarify the issue and help to minimize any debate concerning how much personal information should be released.

[29] In the circumstances of the case, then, I find that the Town's disclosure of the Complainant's personal information was not the minimum necessary to achieve its purpose and, therefore, the disclosure was not in accordance with section 39(2) of the *ATIPPA*. While it was reasonable to disclose the Complainant's personal information to the Councillors, it was not necessary to table the unsevered letter at a public meeting of Council, nor to disclose the Complainant's personal

information in the agenda or the minutes. The Town could have tabled and discussed the letter in a manner that allowed it to comply with section 215(1) of the *Municipalities Act* and also section 39(2) of the *ATIPPA* by severing the letter to remove personal information prior to it being tabled, the intended result being that personal information would also then not appear in the minutes or the agenda. Alternately, the possibility of entering into a privileged meeting to discuss the letter was available to the Town. Either of these options would have allowed the Town to conduct its necessary business while protecting personal privacy.

## VI RECOMMENDATIONS

[30] Given the above findings, it is my recommendation, in accordance with section 51 of the *ATIPPA*, that in the future, all documents containing personal information be appropriately severed prior to being tabled and discussed at a public meeting, where it is reasonable to do so. Likewise, agendas and minutes of meetings (which are also public documents) should be prepared in such a manner as to avoid the inclusion of personal information whenever it is possible to do so. Where severing a document is not appropriate, but discussion among Councillors of personal information is necessary, personal information should be discussed at a privileged meeting of Council. When neither of these options is suitable, and personal information must be discussed at a public meeting, then municipalities should be guided by sections 39 and 40 of the *ATIPPA*, which, as discussed earlier, allow personal information to be disclosed when necessary.

[31] The Town is requested to please respond to this recommendation within 30 days of receiving this Report.

[32] Dated at St. John's, in the Province of Newfoundland and Labrador, this 14th day of July, 2011.

E.P. Ring  
Information and Privacy Commissioner  
Newfoundland and Labrador