

**NEWFOUNDLAND AND LABRADOR**  
**OFFICE OF THE INFORMATION AND PRIVACY**  
**COMMISSIONER**

**REPORT 2006-010**

**Department of Government Services**

**Summary:**

The Applicant applied to the Department of Government Services (the “Department”) for access to a letter written by a third party which references the Applicant. The Department provided access to most of the letter, but severed two small passages, citing the mandatory exception set out in section 30 of the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*”), which prohibits the disclosure of another person’s personal information without that person’s permission. Efforts to resolve this matter informally were unsuccessful, and the Applicant requested that the Commissioner review this matter. The Applicant alleges that a different letter that he wrote to a government official had previously been disclosed in full to the third party who wrote this letter (and to the R.C.M.P.), and he therefore felt that the same standard should apply in this case, such that he should receive a complete and unsevered copy of the letter to which he requested access. The Commissioner determined that the passages in the letter which the Department had severed had been correctly withheld. The Commissioner also determined that he could not issue a recommendation in relation to the alleged disclosure by a government official of a different letter which was not the subject of the Applicant’s access request. One recommendation was issued by the Commissioner in relation to the Department’s failure to respond to the Applicant within the 30 day time limit as prescribed by section 11 of the *ATIPPA*.

**Statutes Cited:**

*Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A 1.1, as am, ss. 2(o), 9, 11, 30, 49(1), 50, 60.

## I BACKGROUND

- [1] The Applicant submitted the following request dated 19 December 2005 to the Department of Government Services (the “Department”) under the *Access to Information and Protection of Privacy Act* (the “ATIPPA”):

*I like access to a copy of Mr. [individual]’s of [location] letter he wrote on September 24<sup>th</sup>, 2002 to Mr. [official A] Environmental Protection Officer. If Mr. [official B] Environmental Health Investigator and is suppose to be bound by legislation not to release personal information but release personal information in my letter I wrote on May 5<sup>th</sup>, 2003 to the Honourable [Member of the House of Assembly] at the time Government Services and Lands and also took it out to the RCMP in [location] wish he could not do, and now I have a right to a copy of Mr. [individual]’s letter [sic].*

- [2] In a letter dated 20 December 2005 the Department acknowledged receipt of the Applicant’s request. The Department then issued a further letter dated 6 February 2006 in which the Applicant was advised that access to the record had been granted in part. The Department also noted that access to a portion of the record was being withheld on the basis that it constitutes personal information as per section 30(1) of the *ATIPPA*.

- [3] The Applicant then filed a Request for Review with this Office which was received on 23 March 2006 in which he indicated the following:

*I like access to all of Mr. [individual]’s letter he wrote to Mr. [official A] on August 19<sup>th</sup>, 2002, and section 7(2) of the Act or section 30(1) of the Act should not apply in this case because my letter I wrote and dated May 5<sup>th</sup> 2003 to Mr. [Member of the House of Assembly] Minister at the time of the Department of Government Services and Lands was released to Mr. [individual] and the R.C.M.P. in [location] by Mr. [official B] [sic].*

- [4] Attempts to resolve this Request for Review by informal means were not successful. On 10 April 2006 the Applicant and the Department were notified that the file had been referred to the formal investigation process.

## II PUBLIC BODY'S SUBMISSION

- [5] The Department of Government Services forwarded a brief response in which it advised that it has not changed its position with regard to the severed passages of the record. The Department takes the position that these brief passages constitute the personal information of someone other than the Applicant, and are therefore properly withheld under section 30(1) of the *ATIPPA*.

## III APPLICANT'S SUBMISSION

- [6] In his Request for Review, the Applicant argues that he has a reasonable expectation of complete and unsevered access to the requested record (a letter), because he alleges that the person who wrote the letter (as well as the R.C.M.P.) were previously given access to a letter written by the Applicant. He says that the law should apply equally to all parties, and therefore the only way to handle the situation is to give the Applicant access to the record.
- [7] No further submission was forwarded by the Applicant with regard to this particular matter, however, in response to a telephone inquiry by my staff, he confirmed that the letter to which he is seeking full access is dated 19 August 2002. He says he was given incorrect information by someone which led him to state 24 September 2002 as the date of the letter in his access request, which he corrected in his Request for Review.

## IV DISCUSSION

- [8] The subject of this review is a two page letter, written by a third party, which references both the author of the letter and the Applicant. The Department chose to release to the Applicant the vast majority of the letter, but severed a full sentence in one paragraph, and part of a sentence in another paragraph. In doing so, the Department relied on section 30(1):

*30. (1) The head of a public body shall refuse to disclose personal information to an applicant.*

[9] Personal information is defined in section 2(o) of the *ATIPPA* as follows:

*2. (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;*

In this case, I am satisfied that the severed portions of the record in question meet the definition of personal information set out in section 2(o) of the *ATIPPA*.

[10] Section 30(1) is a mandatory provision of the *ATIPPA*. Once a public body determines that this section applies, no discretion rests with that public body to release the severed material in question, unless one of the conditions indicated in 30(2) is present, as follows:

*30. (2) Subsection (1) does not apply where*

*(a) the applicant is the individual to whom the information relates;*

*(b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;*

*(c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is mailed to the last known address of the third party to whom the information relates;*

*(d) an Act or regulation of the province or Canada authorizes the disclosure;*

*(e) the disclosure is for a research or statistical purpose and is in accordance with section 41 ;*

*(f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;*

*(g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;*

*(h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;*

*(i) public access to the information is provided under the Financial Administration Act ;*

*(j) the information is about expenses incurred by a third party while travelling at the expense of a public body;*

*(k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;  
or*

*(l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including*

*(i) personal information that is supplied in support of the application for the benefit, or*

*(ii) personal information that relates to eligibility for income and employment support under the Income and Employment Support Act or to the determination of assistance levels.*

In this case, I am satisfied that none of the conditions described in section 30(2) above are present in the severed portions of the record.

[11] The point raised by the Applicant with regard to this particular matter is what he perceives to be one of fairness. He believes that because someone else had complete, unsevered access to a letter he wrote, then he should have the same right to a letter that that person wrote. Unfortunately for the Applicant, the matter before me now is solely in relation to the particular record to which the Applicant seeks access. My task is to review the decision of the Department with respect to that letter. Even though the Applicant is alleging that his own personal information has been disclosed without his knowledge or consent by a public body, it must be observed that Part IV of the *ATIPPA*, which governs the collection, use and disclosure of personal information, is not yet in force. I am therefore not in a position to investigate or issue recommendations on that matter, and as a result, the Applicant has no grounds upon which to base a complaint to this Office.

[12] It should be noted, however, that even if I were in a position to investigate that particular allegation, this would not in any way affect my analysis of the Department's decision regarding the record at issue, which is the letter written by a third party which references the Applicant. The matter before me is a separate issue, and there is no basis in the *ATIPPA* upon which to link the disclosure of one record to another in this type of situation.

[13] In addition to his request that I review the decision of the Department with regard to this particular record, the Applicant also asked that I review an alleged failure of the duty to assist. The duty to assist is set out in section 9 as follows:

*9. The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.*

[14] Although the Applicant did not specify which particular aspect of the duty to assist he wished me to focus on, I note that the time elapsed between the date of the Applicant's request and the date of the response received exceeds the time frame set out in section 11, as follows:

*11. (1) The head of a public body shall make every reasonable effort to respond to a request in writing within 30 days after receiving it, unless*

*(a) the time limit for responding is extended under section 16 ;*

*(b) notice is given to a third party under section 28 ; or*

*(c) the request has been transferred under section 17 to another public body.*

*(2) Where the head of a public body fails to respond within the 30 day period or an extended period, the head is considered to have refused access to the record.*

[15] The Department did not issue its letter of response to the Applicant until 6 February 2006. It acknowledges receiving the Applicant's request on 20 December 2005, which means that a total of 49 days elapsed before the letter was issued, along with a severed copy of the requested record. This is not an acceptable time frame given the requirements set out in section 11 of the *ATIPPA*.

## **V CONCLUSION**

[16] In the matter at hand, I agree with the decision of the Department to sever some material from the letter which forms the record at issue. I do note, however, that the time frame for the Department's response to the Applicant is greater than that required by the *ATIPPA*, and this is an issue which needs to be taken seriously by the Department.

## **VI RECOMMENDATIONS**

[17] I find that the case of the Applicant is not well founded with respect to the record which is the subject of this Review, and I therefore issue no recommendation with respect to that record. With respect to the Department's delay in responding to the Applicant's request, I hereby recommend under authority of section 49(1) of the *ATIPPA* that the Department review its procedures for responding to access requests in order to ensure that it is in a position to comply with its obligations under section 11 of the *ATIPPA*.

[18] Under authority of section 50 I direct the head of the Department of Government Services to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the Department's final decision with respect to this Report.

[19] Please note that within 30 days of receiving a decision of the Department under section 50, the Applicant may appeal that decision to the Supreme Court Trial Division in accordance with section 60 of the *ATIPPA*.

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 18<sup>th</sup> day of May, 2006.

Philip Wall  
Information and Privacy Commissioner  
Newfoundland and Labrador