



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2018-001

January 12, 2018

Town of Paradise

Summary:

The Town of Paradise received an access to information request for a number of items relating to its activities, including a list of its employees, information about a particular employee, and contracts between the Town and two named companies. The Town provided several records as well as answers in response to the Applicant's requests. The Applicant filed a complaint with this Office alleging that the records were incomplete and objecting to the Town's practice of answering questions as an alternative to disclosing records. The Commissioner found that the Town conducted a reasonable search for records and recommended the release of additional records.

Statutes Cited:

[Access to Information and Protection of Privacy Act](#), SNL 2015, c.A1.2, sections 2(i), 8, 40, 40(4)(f)

Authorities Relied On:

OIPC NL [Report A-2017-023](#)
[British Columbia \(Finance\) \(Re\)](#), 2014 BCIPC 44

Other Resources:

OIPC Practice Bulletin: [Reasonable Search](#), March 2017.
Black's Law Dictionary

I BACKGROUND

[1] The Applicant made an access to information request to the Town of Paradise (the “Town”) on or about September 5, 2017 for the following information:

- *Standing offer policy/tender regulations/*
- *What are qualifications for a garage to do work for the Town, and who inspects the garage.*
- *Any and all standing offers with regards to [first named company] and [second named company].*
- *How long has [named employee] worked at the Town of Paradise and how many pay increases has she had and why?*
- *List of employees on the payroll with the Town of Paradise.*

[2] The Town responded to the Applicant’s request on October 3, 2017. The response included a copy of the Town’s Purchasing Policy, which addressed the first two items in the Applicant’s request. For the third item, the Town stated that it did not have any standing offers with the named companies and there were no records responsive to the request. For the fourth item, the Town stated the named employee’s length of service and number of pay increases but did not provide any records. On the fifth item, the Town provided an excerpt from a record that listed the names of the Town’s employees.

[3] The Applicant filed a complaint with this Office with respect to the Town’s responses to items three, four and five, focusing largely on the failure of the Town to provide records rather than the responses provided.

[4] The complaint could not be resolved informally and proceeded to formal investigation in accordance with section 44 of the *ATIPPA, 2015*.

II THE TOWN’S POSITION

[5] The Town reiterates its position originally conveyed to the Complainant that it does not have records responsive to the request regarding standing offers for the two named companies. During the informal phase of my investigation, the Town provided this Office with an overview of its purchasing and tendering policies and practices as well as the search that it conducted for responsive records. It also provided the Complainant with a copy of the

Town's "Notice of Request for Contractor Information" which details its process for maintaining a list of qualified suppliers.

- [6] Also during the informal stage, the Town supplemented its original response with records responsive to the start date of the named employee, as well as confirmed the number of pay increases. The Town took the position that it had appropriately withheld further details of the reasons for the named employee's pay raises under section 40.
- [7] Finally, with regard to the request for a list of employees on the Town's payroll, the Town provided this Office and the Complainant with the full spreadsheet from its Human Resources Department, with personal information redacted as required. The record received by the Complainant listed the names of all active employees as of the date of the request along with their positions. The Town submits that its interpretation of the request as being for active employees of the Town as of the date of the request is reasonable.

III THE COMPLAINANT'S POSITION

- [8] The Complaint objects to the Town's initial failure to provide records. The Complainant also objects to the Town's interpretation of the request for employees on the Town's payroll.

IV DECISION

- [9] The issues addressed in this Report are whether the records provided by the Town were incomplete; whether the Town conducted a reasonable search for records; whether the Town properly applied section 40; and whether it reasonably interpreted the Complainant's requests.

Requirement to Provide Records

[10] As noted above, in the Town's final response letter dated October 3, 2017, the Town responded to several of the Complainant's requests with information but not records:

Q: Any and all standing offers with regards to [named company] and [named company]?

A: The Town does not have standing offers with [named company] or [named company]

Q: How long has [named employee] worked for the Town of Paradise and how may pay increases [have they] had and why?

A: [Named employee] has worked for the Town of Paradise for 2 years and 7 months. She has received two pay increases.

[11] In addition, the response to the fifth item in the request, for a list of employees on the Town's payroll, appeared to be a new record generated solely to respond to the request.

[12] As held in Report A-2017-023, the *ATIPPA, 2015* speaks (at section 8) to "records in the custody or under the control of a public body". While it may be efficient in some cases for a public body to simply provide an applicant with information, the *ATIPPA, 2015* creates an entitlement to the actual records and a public body is required to disclose all such records that are responsive to an applicant's request. In the course of my investigation, the Town did provide additional records responsive to the Complainant's requests for records relating to standing offers, the service of the named employee and a list of all employees on the payroll.

Standing Offers

[13] The Complainant sought copies of any standing offers the Town had with two named companies. The Town responded to the Complainant by advising that it did not have standing offers with those two named companies and, further, advised the Complainant that the Town does not utilize standing offers with suppliers. In searching for responsive records and otherwise addressing this part of the Complainant's request, the Town consulted with relevant staff within its organization, including the Director of Corporate Services (who has responsibility for procurement and developing the Town's purchasing policies), the

Procurement Officer, and relevant operations managers. Our Practice Bulletin “*Reasonable Search*” requires conduct of searches by knowledgeable staff, in locations where the records in question might reasonably be located. I am satisfied that the Town conducted a reasonable search.

[14] Further, the Town informed both the Complainant and this Office of its purchasing policies. The Town is subject to the *Public Tender Act*, which mandates making purchases of goods and services by public bodies over a certain threshold via public tender. Purchases under the threshold set by the legislation do not require a tender. The Town’s policy, for purchases that do not require a tender, is to solicit quotes from qualified suppliers that respond to its “Notice of Request for Contractor Information”. The Town has confirmed to this Office and to the Complainant that the two named companies are indeed qualified suppliers. I am therefore further satisfied with the Town’s explanation for the lack of records responsive to the Complainant’s request.

Named Employee

[15] During my investigation, the Town released further records to the Complainant, namely an e-mail dated February 26, 2015 notifying Town staff that the named employee was commencing work with the Town on that date. This date is consistent with the answer previously provided by the Town and the record is responsive to the Complainant’s request regarding the length of service of that employee. The Town also corrected its previous response to the Complainant and advised that the employee had received four pay increases during their time with the Town. The Town did not provide records responsive to this part of the request to the Complaint but did provide this Office with a series of e-mails documenting the various pay increases the named employee received.

[16] The Town’s position was that these further records contained personal information of the named employee that fell under section 40, including section 40(4)(f) in particular (“the personal information consists of personal recommendations or evaluations, character references and personnel evaluations”). While I agree that one of the pay increases resulted

from an evaluation, the contents or other details of that evaluation are not contained in the records: they merely disclose that the pay increase is a result of an evaluation.

[17] Section 40(2) lists a number of situations where the disclosure of personal information is presumed not to be an unreasonable invasion of privacy. These include where the information relates to a third party's position, functions or remuneration as an officer or employee or member of a public body (section 40(2)(f)). The Applicant named the employee in question, similar to the circumstances in [British Columbia \(Finance\) \(Re\)](#), 2014 BCIPC 44. I am satisfied that information relating to salary step increases received by an employee, a new salary as the result of taking on a new position with a public body, and a statement that an evaluation has recommended a salary increase are all encompassed by section 40(2)(f). Therefore, these records are subject to disclosure.

Payroll

[18] The Complainant sought a "list of employees on the payroll of the Town of Paradise". The Town responded with a single-column list of the Town's employees as of August 30, 2017 (being the last update of that document prior to the Complainant's access request). The Complainant objected that this appeared to be a newly-created document. During the investigation, the Town provided my Office and the Complainant with the full spreadsheet from which it extracted this information. The Town indicated that its human resources department maintains the document as a central list of all active employees.

[19] Despite receiving the full spreadsheet (subject to the redacting of personal information), the Complainant remained dissatisfied with the Town's response. The Complainant believed that at least two former employees of the Town were receiving severance in the form of a salary continuance. The Complainant's position is that if they are still receiving a regular salary under the terms of their severance, they should appear in any list of "employees on the payroll" of the Town.

[20] The definition of employee in the *ATIPPA, 2015* is not determinative of the matter at hand. These terms are defined in *Black's Law Dictionary*:

Payroll: “A list of employees to be paid and the amount due to each of them”

Employee: “A person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control details of work performance”

“Employees” implies a list of individuals actively working for the Town, while “payroll” refers to individuals who are receiving a salary or other payment from the Town. A “list of employees on the payroll” of the Town was reasonably interpreted as a list of those individuals meeting both criteria: performing work for the Town *and* being paid. One could reasonably exclude persons who are no longer performing work for the Town but in receipt of some payment (such as salary continuance).

[21] While salary continuance is a common form of severance, and the Complainant expected the Town’s response to include any individuals who may be under a salary continuance, the Town’s response was adequate.

V CONCLUSION

[22] As a result of the investigation, I conclude:

- a. The Town conducted an adequate search for records responsive to the Complainant’s third item (standing offers);
- b. Further records responsive to the Complainant’s fourth item (employee information) should be released;
- c. The Town’s response to the Complainant’s fifth item (employee list) was adequate;

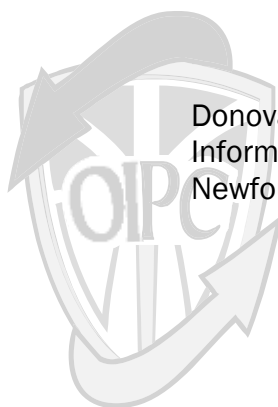
VI RECOMMENDATIONS

[23] Under the authority of section 47 of the *ATIPPA, 2015* I recommend that the head of the Town of Paradise release the majority of the e-mails documenting the named employee’s pay increases. I am providing the Town of Paradise with a copy of the e-mails, which are 10 pages in length, and the areas highlighted in yellow are the areas that may be withheld

pursuant to section 40 or as non-responsive to the Complainant's request. I recommend that the Town of Paradise release to the Complaint the remainder of those records.

[24] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the Town of Paradise must give written notice of his or her decision with respect to these recommendations to the Commissioner and 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 12th day of January, 2018.



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