OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2018-018

July 27, 2018

Town of St. George's

Summary: The Town of St. George's (the "Town") received an access request seeking disclosure of T4 information of employees of the Town. The Town denied access to the records based on section 39(2) (disclosure harmful to the business interests of a third party) of the *ATIPPA, 2015*. The Commissioner determined that the Town properly applied section 39(2) to withhold the records and recommended the Town continue to withhold the records.

Statutes Cited: *Access to Information and Protection of Privacy Act, 2015, SNL 2015, c A-1.2*, s. 39(2).

Authorities Relied On: Newfoundland and Labrador OIPC Report A-2017-002; British Columbia OIPC Order F-15-19

File #: 0025-074-18-023

I BACKGROUND

[1] On April 5, 2018 the Town of St. George's (the "Town") received an access to information request from the Applicant seeking:

- *For year 2017 copy of t4s for*
- *Town manager*
- *Town clerk*
- *Head of maintenance (Supervisor)*

[2] The Town responded to the Applicant on April 19, 2018 denying access to the requested records based on sections 39(2) (disclosure harmful to the business interests of a third party) of the *ATIPPA, 2015*. The Applicant was not satisfied with the Town's response and filed a complaint with this Office.

[3] As informal resolution was unsuccessful, the complaint proceeded to the formal investigation in accordance with section 44(4) of the *ATIPPA, 2015*.

II PUBLIC BODY'S POSITION

[4] The Town advised that it sought consent from the individual employees to release the information who, as they were entitled to do, withheld their consent.

[5] The Town's position is that the T4 information meets section 39(2) of the *ATIPPA, 2015* and therefore it is required to withhold it.

III APPLICANT'S POSITION

[6] The Applicant's position is that the information in the T4 should be disclosed as the T4 is not used for tax administration by the Town. It is his position that the Town does not determine the tax liability of an individual by using the personal tax documents and that the Town does not collect the T4s from taxpayers.

[7] The Applicant argued as follows:

> *T4, T2, T1 information obtained from taxpayers are for the purposes of tax policy and administration. Theses* [sic] *are usually requested by the town to deal with tax matters. Employees of the t4 are not in the same category. They are not used for enforement* [sic] *and tax administration as they are not requested by the town for that purpose. T4 must be issued by the town. Cra requires that they be issued. As all other issues of employee income are public so should the t4 which is only total from payroll records and other benefits.*

[8] The Applicant stated that in order to rely on this exception to disclosure the Town should prove how they use the employee's T4s for the purposes of tax administration and collection. He further submitted that any tax liability to taxpayers of the Town is based upon property value and not what is in the T4.

IV DECISION

[9] The T4 is a "Statement of Remuneration Paid" form that lists, for example, a person's employment income, income tax deducted, CPP contributions, EI premiums, RPP contributions, pension adjustments, social insurance number, name, and home address.

[10] The T4 is a CRA form employers must complete and provide to CRA and the employee. The information from a T4 is entered on an individual's tax return.

[11] Section 39(2) of the *ATIPPA, 2015* states:

> *39. (2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return, gathered for the purpose of determining tax liability or collecting a tax, or royalty information submitted on royalty returns, except where that information is non-identifying aggregate royalty information.*

[12] As the T4 information is clearly not royalty information, the issue to be determined is whether the T4 is information that was obtained on a tax return, information that was

gathered for the purpose of determining tax liability or information that was gathered for the purpose of collecting a tax.

[13] Report A-2017-002 and Order F-15-19 from the Office of the Information and Privacy Commissioner of British Columbia dealt with requests for a total amount of taxes paid or taxes owing. While it was determined that the requested information did not meet section 39(2) of the *ATIPPA, 2015* or the equivalent section in the British Columbia legislation, the purpose of those sections was reviewed.

[14] Paragraphs 27-28 of Report A-2017-002 noted:

> *[27] The Office of the Information and Privacy Commissioner of British Columbia has on several occasions examined issues similar to those in this matter. Order F-15-19 dealt with a provision of British Columbia's Freedom of Information and Protection of Privacy Act (FIPPA) similar to our section 39(2). In that case, information pertaining to tax liabilities was ordered to be disclosed. In that instance however the records sought involved aggregate information generated by the public body in relation to five properties, not information of individual property owners. Had individual records been sought, it is fair to conclude from the following that the records would have been excepted from disclosure as records gathered for the purpose of determining tax liability or collecting a tax. While the word "confidentiality" is more apt than "privacy" in respect of corporate information, I agree with the substance of the analysis in Order F-15-19:*
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> > *While the intent of FIPPA is to make public bodies more open and accountable through disclosure of information, it also recognizes that exceptions to disclosure are desirable and necessary in certain circumstances. The tension between these dual purposes in FIPPA is plainly evident in this case. A public body's ability to disclose information like the aggregate tax information in this case encourages public accountability, while the exceptions in ss. 21(2) and 22(3)(e) recognize that taxpayers, whether individual or corporate, are entitled to privacy with respect to their tax information. Such privacy fosters the voluntary and fulsome disclosure of information necessary for governments to determine tax liability and collect tax. If individual tax payers fear disclosure of their tax information, it may result in a reluctance to share such information with the public body collecting that information for tax purposes. Based on the facts of this case, I am satisfied that the information in dispute neither directly nor indirectly discloses the tax information of the individual Insurers, and*

> *disclosure would not undermine the balance between public accountability and the protection of taxpayer privacy.*
>
> *[28] In Order F05-29, former British Columbia Commissioner Loukidelis addressed the purpose of section 21(2) in ordering disclosure of general information generated by the assessment authority to assess market rent, vacancy allowance, expense allowance and capitalization rates:*
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> > *In my view, the purpose of s. 21(2) is to protect information that a public body obtains from a taxpayer (on the taxpayer's tax return) or otherwise gathers relating to the taxpayer for the purpose of determining a tax liability or collecting a tax. The policy of this disclosure exception is to protect information obtained or gathered relating to the taxpayer for the purpose of determining tax liability or collecting a tax, without, unlike s. 21(1), requiring the establishment of confidentiality of the information or a reasonable expectation of harm to the taxpayer from its disclosure.*

[15] It is clear that the T4 information in this case is an individual person's record. The information from the T4 is entered on a person's tax return and is used to determine their tax liability.

[16] The Applicant argues that the Town has to use the information for tax administration, however, this is incorrect as all the *ATIPPA, 2015* speaks to is whether the information was obtained on a tax return or whether it was gathered for the purpose of determining tax liability or collecting a tax. The *ATIPPA, 2015* does not specify that the public body that gathers the information must also be the public body who determines the tax liability or collects the tax. The focus of section 39(2) is on the characteristics of the information at issue. The information contained on the T4 is gathered for the purpose of determining tax liability or collecting a tax.

V CONCLUSIONS

[17] The Town has complied with the *ATIPPA, 2015* by withholding the T4 records.

VI RECOMMENDATIONS

[18] Under the authority of section 47 of the *ATIPPA, 2015*, I recommend that the Town of St. George's continue to withhold the T4 records.

[19] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the Town of St. George's 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 Applicant) within 10 business days of receiving this Report.

[20] Please note that within 10 business days of receiving the decision of the Town of St. George's under section 49, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador in accordance with section 54 of the *ATIPPA, 2015*.

[21] Dated at St. John's, in the Province of Newfoundland and Labrador, this 27th day of July 2018.

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