



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2018-026

November 9, 2018

Town of Marystown

Summary:

An Applicant made a request to the Town of Marystown requesting all records referring to him during a nine-month period, particularly minutes of privileged meetings held by Council. The Town provided a number of records responsive to the request but withheld the privileged meeting minutes. The Applicant was not satisfied and filed a complaint with this Office. During the complaint process, the Applicant was granted partial access to the records. The Town of Marystown withheld the remainder of the records under section 28(1)(c). The Commissioner determined that the Town was authorized to withhold the remainder of the records.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c.A-1.2, section 28.
[Municipalities Act](#), SNL 1999, Chapter M-24, section 213.

Authorities Relied On:

Newfoundland and Labrador OIPC Report [2007-018](#); BC [Order 03-09](#), 2003 CanLII 49173 (BC IPC); BC [Order F15-20](#), 2015 BCIPC 22 (CanLII).

I BACKGROUND

[1] The Town of Marystown (the “Town”) received an access request pursuant to the Access to Information and Protection of Privacy Act, 2015 (the “ATIPPA, 2015” or “Act”) seeking disclosure as follows:

All records mentioning/discussing [the Applicant], including all correspondence (memos, emails, letters, etc), meeting minutes, meeting notes, discussion notes and recordings.

Timeframe: September 27, 2017 to June 25, 2018.

[2] The Town advised the Applicant that there were 545 pages responsive to the Applicant’s request. Access was granted to 288 pages, severing information in accordance with section 30 (legal advice), section 40 (disclosure harmful to personal information), 35 (disclosure harmful to business interests of a public body), and section 39 (disclosure harmful to business interests of a third party) under the ATIPPA, 2015.

[3] The Town also withheld access to the remaining 257 pages in their entirety, citing sections 30 (legal advice).

[4] The Applicant filed a complaint with this Office. In the course of our investigation, the Town further claimed section 28(1)(c) (local public body confidences) over minutes of privileged meetings. After consultation with this Office, the Town provided the Complainant with an additional 75 pages of records, after redacting personal information of third parties and legal advice. The Complainant remained unsatisfied on the issue of privileged meeting minutes. As an informal resolution was not possible, the complaint proceeded to formal investigation in accordance with section 44 of the ATIPPA, 2015.

[5] During the formal investigation, the Town engaged in further discussions with this Office and reviewed additional case law and orders from other jurisdictions. This led to the Town agreeing to provide the Complainant additional meeting minutes, specifically meeting dates, times, attendees, motions declaring meetings to be privileged, and motions adjourning meetings.

II PUBLIC BODY'S POSITION

[6] The Town submits that minutes of the privileged meetings were appropriately withheld pursuant to section 28(1)(c) of the *ATIPPA, 2015*. The Town stated that it conducted the privileged meetings in accordance with the requirements of the *Municipalities Act*.

III COMPLAINANT'S POSITION

[7] The Complainant submits that he is entitled to the records because the records contain personal information related to him.

IV DECISION

[8] The issue in this complaint which must be addressed is whether the minutes of the privileged meeting were appropriately withheld under s. 28(1)(c) the *ATIPPA, 2015*:

28. (1) The head of a local public body may refuse to disclose to an applicant information that would reveal

(c) the substance of deliberations of a meeting of its elected officials or governing body or a committee of its elected officials or governing body, where an Act authorizes the holding of a meeting in the absence of the public.

[9] Three factors must be considered in evaluating whether s. 28(1)(c) applies:

- 1) whether legislation authorizes the holding of a privileged meeting;
- 2) whether there is evidence that the meeting in question was held as a privileged meeting; and
- 3) whether the information contained within the record of the meeting would, if disclosed, reveal the substance of deliberations of Council.

Did an Act Authorize the Holding of a Privileged Meeting?

[10] Section 213 of the *Municipalities Act* authorizes the holding of a privileged meeting under specific circumstances:

213. (1) A meeting of a council shall be open to the public unless it is held as a privileged meeting or declared by vote of the councillors present at the meeting to be a privileged meeting.

(2) Where a meeting is held as a privileged meeting or declared to be a privileged meeting, all members of the public present at the meeting shall leave.

(3) A decision of the councillors made at a privileged meeting shall not be valid until that decision has been ratified by a vote of the councillors at a public meeting.

Were the Meetings Privileged Meetings?

[11] For each of the meetings, a motion declaring the meeting to be privileged was carried prior to discussion on any issues. These meetings were held absent of any members of the public. Considering the conditions set out in s. 213 of the *Municipalities Act*, I find that the meetings were privileged within the meaning of section 28(1) of the Act.

Would the Disclosure of the Minutes Reveal the Substance of Deliberations?

[12] The final factor to consider is whether the information contained within the meeting minutes would, if disclosed, reveal the substance of deliberations. Orders from other jurisdictions interpreted similar provisions as excluding factual information regarding the privileged meetings, such as date, time, and attendees, as not included within the substance of the deliberations. After considering the matter further, the Town commendably released this information to the Complainant during the formal investigation process.

[13] This Office previously considered the meaning of “substance of deliberations” in Report 2007-018, at para. 36:

Therefore, in order to refuse to disclose information on the basis of [then] section 19(1)(c) a public body must prove that it is likely that the disclosure of the information would permit the reader to draw accurate inferences about the substance of deliberations that took place in the meeting. The substance

of the deliberations would include such things as what was said by individuals at the meeting, the opinions expressed, how individuals at the meeting voted, and the arguments given in favour of or against taking a particular action.

[14] Other jurisdictions have also considered the issue of “substance of the deliberations” and have found similarly.

[15] BC Order 03-09 considered whether movers of motions, the contents of motions, and who votes for or against those motions would be encompassed within the substance of deliberations:

[22] Would disclosure of the motion that was voted on reveal the substance of deliberations? Distinctions have been made in previous orders between the “subject” of deliberations and the “substance” of deliberations (see, for example, Order 48-1995). The applicant has speculated on what he believes to be the contents of the motion that was defeated on October 30, 2001. The City has refused to confirm or deny the contents of that motion.

[23] The motion, stated in one sentence, is very specific. Given its specificity, it is difficult to see how disclosure of this motion would not reveal the substance of deliberations of Council. I am satisfied that, in this case, discussions of the merits of the motion cannot be separated from the motion itself and that disclosure of the motion would “reveal the substance of deliberations” of Council.

[24] Whether a particular member of Council voted for or against a particular motion would not only reveal the substance of the deliberations of Council but the exact deliberation itself. I find that disclosure of the records of how council voted at an in camera meeting would reveal the substance of Council’s deliberations.

[16] BC Order F15-20 concerned the refusal to disclose City Council resolutions and votes related to privately owned property:

I have reviewed the content of the in camera minutes, and absent any evidence to the contrary, I conclude that disclosure of the names of attendees, the dates and times of the meeting, the date the minutes were adopted and signed and who certified the minutes as correct would not reveal the substance of deliberations. However, I find that disclosing the balance of the information in dispute would directly reveal, or permit the reader to draw accurate inferences about the substance of deliberations at the in camera meetings. That is because the information divulges what matters were discussed, the views council members expressed about those matters and

how they voted. This finding is consistent with previous Orders where it was also found that the content of in camera minutes and how voting proceeded would reveal the substance of deliberations at in camera meetings.

[17] The Complainant specifically seeks “minutes of privileged meetings that contained discussion about [the Complainant] and/or votes, motions, notice of motions” namely the substance of deliberations of the privileged meetings.

V CONCLUSIONS

[18] The Town of Marystown provided to the Complainant copies of the privileged meeting minutes, severing all information which constitutes the substance of deliberations of the meetings. The Town is authorized to withhold the remainder of the records pursuant to section 28(1)(c).

VI RECOMMENDATIONS

[19] Under the authority of section 47 of the *ATIPPA, 2015*, I recommend that the head of the Town of Marystown continue to withhold all the remaining portions of the minutes of the privileged meetings.

[20] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the Town of Marystown 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 within 10 business days of receiving this Report.

[21] Dated at St. John’s, in the Province of Newfoundland and Labrador, this 9th day of November, 2018.

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