



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2019-013

July 5, 2019

### Professional Fish Harvesters Certification Board

**Summary:**

The Complainant sought a list of all individuals certified by the Professional Fish Harvesters Certification Board, along with their contact information. The Public Body determined that the information sought was personal information and was required to be withheld by section 40 (disclosure harmful to personal privacy) of the *ATIPPA, 2015*. The Commissioner agreed that the information was personal information, that the disclosure of the personal information was presumed to be an unreasonable invasion of the personal privacy of the third parties, and that the presumption was not rebutted. The Commissioner therefore recommended that the public body continue to withhold the records.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015, SNL 2015, c A-1.2](#) sections 2, 9, and 40.

[Professional Fish Harvesters Act, SNL1996 c P-26.1](#) sections 4, and 13.

**Authorities Relied On:**

[University of Alberta v. Pylypiuk](#), 2002 ABQB 22; NL OIPC Report [A-2016-030](#); [Alberta Order 98-018](#) and [British Columbia Order F08-14](#).

## I BACKGROUND

- [1] The Department of Fisheries and Land Resources (the “Department”) received an access to information request pursuant to the *Access to information and Protection of Privacy Act, 2015* (the “*ATIPPA, 2015*”) as follows:

*My request is for information held by the Professional Fish Harvesters Certification Board. I'm looking for a list of the names of all apprentices, Level 1 and Level II inshore harvesters registered with the board on each of the years 2017 and 2018, broken down by NAFO fishing zone, along with contact information.*

- [2] As this information was not in the custody or control of the Department, the Department transferred the request to the Professional Fish Harvesters Certification Board (the “Public Body”) pursuant to section 14 of the *ATIPPA, 2015*.
- [3] The Public Body conducted a search of records in its custody or control and determined that the annual applications for certification received from fish harvesters were responsive to the Applicant’s request. However, the Public Body determined that these records contained significant personal information and section 40 of the *ATIPPA, 2015* required the Public Body to withhold them. In its final response letter, the Public Body advised that no responsive records would be released to the Applicant. The Applicant subsequently made a complaint to this Office.
- [4] As an informal resolution could not be reached, the complaint proceeded to formal investigation in accordance with section 44(4) of the *ATIPPA, 2015*.

## II PUBLIC BODY’S POSITION

- [5] The Public Body’s position is that the information sought by the Complainant constitutes personal information under section 2(u) of the *ATIPPA, 2015* and that the disclosure of that information would amount to an unreasonable invasion of privacy. Furthermore, the Public Body argued that there are no relevant provisions within section 40 which would alter that conclusion. The Public Body indicated that the personal information of the third parties was submitted to it in confidence because the Public Body represented to applicants that it would

treat their personal information as confidential, that it would use the personal information solely for purposes of the certification process, and that it would not release it without the approval of the third parties. Accordingly, the Public Body submits that section 40(5)(f) (personal information has been supplied in confidence) must also be considered and would weigh against disclosure.

### III COMPLAINANT'S POSITION

[6] In their submissions to this Office, the Complainant stated that fish stocks are a public resource and, therefore, the identity of all those who carry out the fishery should be available for public disclosure.

### IV DECISION

[7] The Complainant sought three pieces of information from the Public Body about fish harvesters which it had certified:

- Name
- Contact Information
- Status of Certification

[8] Personal information is defined at section 2(u) to include an individual's name, address or telephone number, and information about an individual's educational, financial, criminal or employment status or history. As such, I am satisfied that all of the information sought by the Complainant about individuals certified by the Public Body is the personal information of those third parties.

[9] Section 40 of the *ATIPPA, 2015* is a mandatory exception to disclosure, requiring a public body to withhold personal information unless disclosure of that personal information would not be an unreasonable invasion of privacy, as set out in the provided exceptions.

## Section 40(2)

[10] Section 40(2) of the *ATIPPA, 2015* contains a number of factors where the disclosure of personal information is deemed not to be an unreasonable invasion of a third party's personal privacy. In the course of our investigation, I considered whether section 40(2)(k) would apply to the records sought by the Complainant:

*(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where*

*. . .*

*(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;*

[11] The application of section 40(2)(k) depends on whether the licence, permit or benefit granted by the Public Body through the certification process is discretionary. An analysis of substantially similar provisions in the *Alberta Freedom of Information and Protection of Privacy Act* in Order 98-018 relies on a review of the statutory authority for the licence, permit or benefit in question. In that case, an applicant sought the names of residents granted a licence to hunt grizzly bears. Such licenses are governed by the *Alberta Wildlife Act* and its regulations, which states:

*16(1) Except as prescribed, the Minister may issue a licence or permit to an applicant and may*

*(a) determine the number of licences or permits to be issued, and*

*(b) where the number of licences or permits is to be limited, establish the manner in which they are to be allocated.*

Section 22 of the *Wildlife Act* similarly grants the Minister the discretion, using permissive language, to cancel or suspend a licence or permit; or to reinstate a licence or permit. The disclosure of the information was therefore presumed not to be an unreasonable invasion of privacy and the Commissioner recommended that the public body release the names of the licence holders.

[12] Conversely, the British Columbia Information and Privacy Commissioner in Order F08-14 addressed the same provision in the context of a request for personal information through

the Insurance Corporation of British Columbia, a public body which is responsible for driver licensing and vehicle registration. British Columbia's *Motor Vehicle Act* requires the Corporation to issue a licence to every qualifying applicant, so the Commissioner held that a driver's licence or a vehicle registration were not discretionary benefits, and the disclosure of personal information in relation to such licenses would be an unreasonable invasion of a third party's personal privacy.

[13] The Public Body is governed by the *Professional Fish Harvesters Act*, which states:

*13. (1) A person who meets the certification criteria established by the board under section 12 is eligible for certification.*

*(2) The board shall issue a certification for which he or she is qualified to a person who is eligible under subsection (1) and who pays the fee set by the board.*

*(3) The board shall renew the certification annually of a professional fish harvester who pays the fee that the board may set and who continues to meet the criteria for certification.*

Accordingly, I am satisfied that there is no discretion involved in the certification of fish harvesters and section 40(2)(k) therefore does not apply. As a result, the information requested cannot be released to the Applicant under that provision.

#### **Section 40(4)**

[14] While the requested personal information does not fall under any of the categories contained within section 40(2), it may be presumed by section 40(4) to be an unreasonable invasion of the personal privacy of the third parties.

[15] First, the disclosure of one's name is itself presumed to be an unreasonable invasion of privacy, in particular when it appears with other personal information of the third party:

*40(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where*

*...*

*(g) the personal information consists of the third party's name where*

*(i) it appears with other personal information about the third party, or*

*(ii) the disclosure of the name itself would reveal personal information about the third party; or*

[16] To qualify for certification by the Public Body as a professional fish harvester, an individual must not have full-time employment outside of the fishery. To enforce this, it is necessary that an applicant derive at least 75% of their income from fishing. Therefore, the fact of one's certification is evidence of their employment history. Certification and advancement through the various levels of certification offered by the public body (Apprentice Fish Harvester, Professional Fish Harvester Level I and Professional Fish Harvester Level II) require the completion of training and therefore one's classification is evidence of their educational history. This personal information engages section 40(4)(c):

*40(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where*

*...  
(c) the personal information relates to employment or educational history;*

### **Section 40(5)**

[17] When the head of a public body is considering whether or not, in accordance with sections 40(1) or 40(4), a disclosure of personal information would be an unreasonable invasion of privacy, the head is required to consider all relevant circumstances, including those outlined in 40(5). As noted above, the Complainant has put forward an argument that since the fishery is a public resource, the disclosure of the identities of those individuals engaged in the fishery would be in the public interest. Section 9 (public interest) does not apply to section 40, but consideration of the public interest may still be part of a decision by a public body to release or to withhold personal information.

[18] Section 40(5)(a) speaks to subjecting the activities of the province or a public body to public scrutiny, which requires an element of public interest in order to be engaged (see, for example, *University of Alberta v. Pylypiuk* at paragraph 48). Beyond section 40(5)(a) specifically, section 40(5) is not an exhaustive list and it is possible to also generally consider the public interest in disclosing personal information or protecting it from disclosure.

[19] While I agree with the Complainant's position that the fishery is a public resource and the disclosure of information about the general management of this resource is in the public interest, I disagree that the disclosure of the identities and contact information of those fish harvesters certified by the Public Body furthers the public's knowledge or scrutiny of such management. Disclosing names and other personal information does not provide any additional insight beyond what could be obtained through aggregate figures and other information already provided by the Public Body (there were 9,320 fish harvesters certified by the Public Body in 2016, according to its most recent performance report). Further, in its submissions, the Public Body notes that its role with respect to the fishery is restricted to the interests, professionalization and accreditation of fish harvesters and it has no role in the management of fish stocks or the granting of fish licenses.

[20] The Public Body has submitted that applications for certification are supplied in confidence and that fish harvesters have an expectation that their personal information will not be shared beyond several named public bodies in this province and within the federal Government of Canada. Applications for certification include the following declaration of consent:

*I, [name], hereby authorize the Department of Fisheries and Oceans, Human Resource Development Canada and Canada Revenue Agency (CRA) and Marine Institute of Memorial University and Transport Canada to release any information required to assess my professionalization status to the Newfoundland and Labrador Professional Fish Harvesters Certification Board. This information can be released to the Professional Fish Harvesters Certification Board in future years as long as I am registered with the Board. In signing this consent, I authorize the release of:*

- *Any relevant tax information from Canada Revenue Agency for all applicable taxation years;*
- *Any relevant DFO licensing and Catch and Effort data; and*
- *Any other relevant information such as: name, address, telephone number, SIN and FIN.*
- *Any fisheries related training information.*

*This information is to be used by the Newfoundland and Labrador Professional Fish Harvesters Certification Board solely for the purposes of the professionalization program. I also authorize the Newfoundland and Labrador Professional Fish Harvesters Certification Board to release information on my status under the professionalization and certification program to the Department*

*of Fisheries and Oceans, Human Resources Development Canada, Marine Institute of Memorial University and Transport Canada.*

*In signing this Declaration of Consent, I understand that all information which is transferred to the Newfoundland and Labrador Professional Fish Harvesters Certification Board will continue to be regarded as confidential and cannot be released to any other government departments, agencies or other third parties without my approval. This information is to be used solely for the purposes of determining my status under the professionalization program.*

[21] While I must note that public bodies cannot contract out of their obligations under the *ATIPPA, 2015* and an agreement with a third party to withhold their information from disclosure (absent an applicable exception within the *Act*) is of no effect (see, for example, Report A-2016-030) per section 40(5)(f), a relevant circumstance for consideration is whether the personal information has been supplied in confidence. The above-quoted declaration is not determinative as to whether disclosure would be an unreasonable invasion of the personal privacy of the third party applicants for certification, but it does weigh against disclosure.

## V CONCLUSIONS

[22] The requested information consists of the personal information of third party individuals who have been certified as professional fish harvesters by the Public Body. The disclosure of such information is presumed to be an unreasonable invasion of a third party's personal privacy pursuant to sections 40(4)(c) and (g). The information does not qualify for disclosure under section 40(2)(k) or any of the other exceptions provided by the *ATIPPA, 2015*. I have further considered section 40(5) and the factors for consideration set out therein along with the public interest in disclosure and I am satisfied that there are no other factors that weigh in favour of the disclosure of this information.

## VI RECOMMENDATIONS

[23] Having found that the Public Body is required to withhold the requested personal information, under the authority of section 47 of the *ATIPPA, 2015*, I recommend that the Professional Fish Harvesters Certification Board continue to withhold the records which it previously refused to provide to the Complainant.



[24] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of Professional Fish Harvesters Certification Board 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.

[25] Dated at St. John's, in the Province of Newfoundland and Labrador, this 5<sup>th</sup> day of July 2019.



Victoria Woodworth-Lynas  
Information and Privacy Commissioner (A)  
Newfoundland and Labrador