



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2019-015

July 12, 2019

### Department of Municipal Affairs and Environment

**Summary:**

The Department of Municipal Affairs and Environment (the “Department”) received an access request seeking disclosure of complaints about the Applicant, Town Councillors and the responses to these complaints. The Commissioner found that the Department did not comply with the mandatory deadline to respond to the request within the legislated timeframe as set out in section 16(1) of the *ATIPPA, 2015* (time limit for final response). Further, the Department did not meet its duty to assist the Applicant by failing to respond to this request in a timely manner as set out in section 13 (duty to assist applicant). The Applicant complained to the Commissioner. After being contacted by this Office, the Department provided a final response to the Complainant, withholding some of the information, including the signatures on a petition, under section 40 (disclosure harmful to personal privacy). The Commissioner found that the Department properly applied the exceptions and recommended the Department continue to withhold the information.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), S.N.L. 2015, c. A-1.2, section 13, 16 and 40.

**Authorities Relied On:**

[Access to Information: Policy and Procedures Manual, October 2017](#); Ontario [Order 172](#); Ontario [Order MO-3345](#)

## I BACKGROUND

- [1] An access to information request pursuant to the *Access to Information and Protection of Privacy Act, 2015* (the “*ATIPPA, 2015*”) was made to the Department of Municipal Affairs and Environment (the “Department” or “MAE”) seeking disclosure of “all complaints rec’d concerning me or Mayor and Councilors of [a named Town] and Department responses to parties complaining.”
- [2] The Department failed to respond to the request within the legislated timeframe set out in section 16 of the *ATIPPA, 2015* and the Complainant filed a complaint with the Commissioner. Upon being contacted by this Office, the Department provided a final response to the Complainant.
- [3] In its response to the access request, the Department provided access to some of the responsive records while withholding other information, relying on section 40(1) (disclosure harmful to personal privacy) of the *ATIPPA, 2015*. The Complainant was unsatisfied with the Department’s response regarding the Department’s decision to withhold names on a petition, and requested that the Commissioner review the information withheld by the Department. The only record at issue in this Report is the petition, as issues regarding other information withheld based on section 40 were resolved during the informal resolution process.
- [4] As informal resolution was unsuccessful, the matter proceeded to formal investigation in accordance with section 44(4) of the *ATIPPA, 2015*.

## II COMPLAINANT’S POSITION

- [5] The Complainant believes that petitions are, in essence, public documents. He states that when a person places their name on a petition, the signatory does so with knowledge that the document will be “used publicly to achieve an agenda that will be contested.”
- [6] The Complainant asserts the petition was obviously intended by the organizers to be made public, as the organizers posted notices of the petition and the petition itself in the Town Hall

and other public spaces where it was signed. He also notes that the organizers contacted members of the media and media outlets to discuss the subject of the petition in an attempt to draw attention to the matter.

### III PUBLIC BODY'S POSITION

[7] The Department acknowledges it failed to respond to the access to information request within the time period set out in the *ATIPPA, 2015*. The Department also cites the large volume of access requests received by the Department as further explanation for a late response. Additionally, the Department also explained that extra care was required when reviewing the records which further caused delay, as the issue in the petition and the Town Council are currently the subject of an inspection it is conducting. The Department, however, acknowledges responsibility for not seeking an extension from this Office before the deadline passed.

[8] Regarding the petition, the Department submits that disclosure of the names collected on the petition would be an unreasonable invasion of privacy under section 40(1) of the *ATIPPA, 2015*. The Department also cited section 40(5) of the *ATIPPA, 2015* which requires the head of a public body to consider all relevant circumstances in determining whether a disclosure of personal information constitutes an unreasonable invasion of privacy. In particular, the Department referenced section 40(5)(f), stating that the head of a public body should consider whether “the personal information has been supplied in confidence.” The Department states that, to its knowledge, the signatures on the petition were collected in a semi-private manner through a door-to-door campaign. The petition was addressed directly to the Minister of the Department, which could have given the impression to signatories that it was not intended to be publicly shared, debated or tabled. Further, “there was no other text on the petition that would signal to signatories that the petition was a public document or that personal information supplied on the petition could be subject to disclosure under an access to information request.” The Department also states that a small number of signatories indicated in separate correspondence that they wanted their support for the petition to be kept in confidence.

[9] Additionally, the Department submits that the release of the names of signatories would unfairly subject them to harm, as outlined in section 40(5)(e) of the *ATIPPA, 2015*. The Department says residents raised concerns that public support for the petition's proposal to dissolve the Town Council posed a risk to their personal well-being, including significant stress, upset, as well as fear of retribution and negative response.

#### IV DECISION

[10] The following are the issues to be decided:

1. Did the Department comply with the time period set out in section 16?
2. Did the Department comply with the duty to assist set out in section 13?
3. Would disclosure of names of signatories to a petition be an unreasonable invasion of privacy as set out in section 40?

#### *Did the Department comply with the time period set out in section 16?*

[11] Section 16 of the *ATIPPA, 2015* states:

*16. (1) The head of a public body shall respond to a request in accordance with section 17 or 18, without delay and in any event not more than 20 business days after receiving it, unless the time limit for responding is extended under section 23.*

*(2) Where the head of a public body fails to respond within the period of 20 business days or an extended period, the head is considered to have refused access to the record or refused the request for correction of personal information*

[12] The Department acknowledges that it did not respond to the Complainant's request within the 20 business days set out in section 16(1) of the *ATIPPA, 2015*. The Department provided an explanation that it wanted to take due care and attention to records, considering the tension among residents and the Town Council, the current inspection, as well as noting the large volume of other access requests.

[13] The Department admitted that it ought to have requested an extension for the final response to the Complainant and that it had simply missed the deadline to do so. Although

the Department did provide the records to the Complainant within a week of being contacted by this Office, failure to respond within 20 business days to an applicant is considered a deemed refusal by the head of the public body, per section 16(2) of the *ATIPPA, 2015*.

- [14] Given the deemed refusal of this access request, by failing to meet its statutory deadline, the Department should review the workload of the coordinator and ensure that they have the resources required to meet all statutory deadlines, and furthermore to put in place procedures to ensure that the need for time extensions is identified early and an application is sent to this Office by day 15, as required by section 23(1).

***Did the Department comply with the duty to assist set out in section 13?***

- [15] In addition to the statutory deadline, as outlined in the ATIPP Office's *Access to Information Manual*, public bodies are also obligated to respond to requests in a timely manner to fulfill the duty to assist:

*It is incumbent on the ATIPP Coordinator to ensure that time limits are met – if a public body does not provide records within the statutory deadline, it will be in default of its statutory responsibility.*

- [16] While I acknowledge that the Department took steps to maintain communication by corresponding with the Complainant after the deadline, the Department was unable to provide the Complainant with a final date when the records would be sent to him. The records were finally provided to the Complainant on day 26 of the access request.

- [17] Therefore, I find that the Department also breached section 13 of the Act, as it failed in its duty to assist the Applicant.

***Would disclosure of names of signatories to a petition be an unreasonable invasion of privacy as set out in section 40?***

- [18] Section 40 of the *ATIPPA, 2015* states:

*40. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.*

[19] It is generally accepted that petitions are public documents. They often contain names, signatures, addresses, and other personal information of signatories. Disclosure of personal information on a petition has often been enabled and supported under access to information laws because of how the personal information was collected, and the implied consent to disclose personal information. In such cases, the disclosure has been found not to be an unreasonable invasion of privacy.

[20] Ontario Order 172 outlines the typical components of a petition:

*Petitions by their very nature, are not documents that have an aura of confidentiality. The signatories to a petition do so voluntarily. By including their name on a petition, a signatory takes a public stand with respect to the issue being petitioned for. Petitioners are aware that they are revealing personal information about themselves when they add their names in support of a petition. They also realize that the petition will be circulated and used in whatever manner is necessary in order to further the cause being petitioned for.*

*Further, petitions are usually collected in a fairly public manner. Proponents of a petition often seek additional signatories in shopping malls, in front of public buildings or in door to door campaigns. Individuals are approached to add their names to the petition and are given the opportunity to read the body of the petition. Upon doing so, the individual, who may or may not become a signatory, will have the opportunity to see the names, addresses and signatures of those who have already lent their support to the petition.*

[21] More recently, however, some jurisdictions have taken a contextual view of petitions, rather than a categorical approach. Ontario Order MO-3345 describes the contextual considerations the IPC has adopted:

*[22] This office deviated from a strictly categorical approach to petitions in other orders considering the particular context and circumstances in which personal information appears in a petition. In Order M-580, for example, the adjudicator acknowledged that while petitions may, by their very nature, lack an aura of confidentiality, there may be cases where, because of the sensitivity of their content, the requirements of a presumed unjustified invasion of privacy will be met. In that case, the adjudicator found that the disclosure of petitioners' information in a complaint about the condition of a requester's property would be a presumptive unjustified invasion of their personal privacy, based on the circumstances surrounding the creation of the petition. Similarly, in Order MO-1309, the adjudicator found there was no indication that signatories to a petition dealing with a local issue reasonably expected or consented to the disclosure of their names and addresses to a wider audience*

*or for a purpose other than that specified in the petition. In those circumstances, the adjudicator concluded that the petitioners had not consented to the disclosure of their personal information for the purposes of an access request, and found their information exempt under section 14(1).*

*[23] I find the approach taken in Orders M-580 and MO-1309 to be more in keeping with the Act's purposes of providing the public with a right of access to information while at the same time protecting the privacy of individuals whose personal information is held by institutions. Rather than applying a categorical treatment to personal information appearing in petitions, this approach considers circumstances including the nature and sensitivity of the petition to determine, among other things, whether a petition signee has consented to disclosure within the meaning of section 14(1)(a) of the Act.*

[22] As the Adjudicator in Order MO-3345 has done, I have decided to take a contextual approach and consider the circumstances of the situation before me. I believe the “nature and sensitivity of the petition” are necessary factors, as well as how the signatures were collected and whether the signatories consented to the disclosure of their personal information.

#### Nature and Sensitivity of Petition

[23] The personal information at issue here includes the signatures of the signatories, as well as opinions regarding the state of the Town Council and residents’ desire to see it dissolved by the Department. According to the petition and accompanying letter, there has been tension in the community for some time, causing significant stress to the residents of the Town. The Department has received complaints regarding the operations of the Town Council and it is continuing to investigate those complaints as part of its inspection as of the date of this Report.

[24] The petition is directed specifically to the Minister of Municipal Affairs and Environment. The petition heading requests that the Town Council be dissolved, and asks the Minister to take action on the matter. Attached to the petition are letters, also addressed solely to the Minister, setting out a past history of the alleged problems with the Town Council.

[25] As in Ontario Order MO-3345, I find that this petition was not intended to be treated as a public document to be publicly discussed, but rather akin to a complaint to the Minister about the Town Council, signed by the residents. The petition was not provided to the Town Council or Councillors to be considered, discussed, and tabled at the Town meeting to address the problems facing the community. Instead, it was sent to the Minister so he might deal with the matter directly. Also, the majority of signatures were collected privately through a door-to-door campaign. While the petition itself was posted publicly in the Town Hall, and notices of the petition were also posted around Town, I have been unable to determine exactly who and how many signatures were collected in this way.

[26] Because of the inter-community divisions, the size of the Town, and the current inspection of the Council, it is my opinion that the nature of the petition is sensitive.

#### Reasonable Expectation of Disclosure

[27] The Complainant argues that release of the names on the petition does not constitute an unreasonable invasion of personal privacy, as there was no reasonable expectation of privacy as the petition itself was posted publicly in the Town Hall, and notices of the petition were also posted around Town. However, this Office confirmed that while some of the signatures were collected in a public manner, as stated above, I have been unable to determine exactly which and how many signatures were collected in this way. The majority of signatures appear to have been collected privately through a door-to-door campaign. The fact that notices and the petition may have been posted publicly does not change the nature of the petition itself as the heading on each sheet of the petition implies the intended audience is the Minister of Municipal Affairs and Environment.

#### Consent

[28] The Complainant also argues that people who sign petitions do so voluntarily and with the knowledge that the information will be made public. The Complainant argues that consent on a petition is implicit.



[29] The Department, however, noted that it had received individual letters from some residents wishing to voice their concerns in confidence. These residents also signed the petition. The Department argues that the fact that some residents sent in complaints in confidence, but then subsequently signed the petition, reveals that they did not understand that they were providing their consent, either implicitly or explicitly, that their personal information could be made public.

[30] With regards to the Complainant's statements about the organizers bringing the petition to the attention of the media, the media were contacted *after* the petition was provided to the Minister. No names, with the exception of one, have been made available to or reported by media outlets, only figures regarding the number of signatures collected were reported.

[31] There is no evidence to suggest that signatories to the petition knew that the organizers would use the petition to gather media attention. Further, the organizers purposely withheld the names from the media so that the signatories' identities would not be made public. Speaking about the petition to the media, much like posting a public notice about the petition, does not indicate who signed or how many signatures were collected. Publicizing the results in such a manner after the petition has been submitted to the Minister does not mean that signatories retroactively consented to the disclosure of their personal information.

#### Other factors

[32] Section 40(5) requires the head of the public body to consider all the relevant factors when determining whether to release personal information. The Department has raised sections 40(5)(e) and (f) as possible considerations.

[33] Section 40(5)(f) lists as one of the factors whether "the personal information has been supplied in confidence". This section is addressed in the paragraphs above.

[34] Section 40(5)(e) requires consideration of whether "the third party will be exposed unfairly to financial or other harm".

[35] The Department cited concerns raised by some residents of fear of retribution if their identities or the identities of others were made public. The Department noted that it believed some of the signatories would experience harm, significant stress, or upset if it was publicly disclosed that they expressed public dissent by signing the petition. I have considered this factor but have found there was insufficient evidence of the risk of harm referred to in section 40(5)(e).

[36] Although I have determined that in this particular case the release of signatures would be an unreasonable invasion of privacy, it must be noted that petitions in general are collected and intended to be made public for the purposes addressing a perceived issue. While some jurisdictions have moved away from the categorical application, it is still the more widely accepted approach when considering whether to disclose personal information contained within a petition. Organizers should make clear to signatories that their personal information may be made available through public disclosure by stating so on the petition itself.

## V CONCLUSIONS

[37] The Department failed to meet the statutory deadline set out in section 16(1). The Department also failed to recognize and seek approval to extend the statutory deadline, as set out in section 23(1).

[38] The Department failed in its duty to assist the Applicant by failing to provide a response to his request in a timely manner, as set out in section 13.

[39] Given the circumstances considered above and taking a contextual approach to the personal information contained on the petition in this matter, I am satisfied that the Department appropriately withheld the personal information of signatories to the petition pursuant to section 40(1) of the *ATIPPA, 2015*.

## VI RECOMMENDATIONS

[40] I recommend that the Department continue to withhold the signatures on the petition.

[41] I recommend the head of the Department of Municipal Affairs and Environment review the workload of the coordinator and ensure that he or she has the resources required to meet all statutory deadlines, and furthermore to put in place procedures to ensure that the need for time extensions is identified and an application is sent to this Office by day 15, as required by section 23(1).

[42] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the Department of Municipal Affairs and Environment 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.

[43] Dated at St. John's, in the Province of Newfoundland and Labrador, this 12<sup>th</sup> day of July 2019.



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