



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2020-011

August 20, 2020

Town of St. George's

Summary:

The Complainant made an access request to the Town of St. George's for a legal opinion. The Town refused to disclose it on the basis of section 30 (solicitor-client privilege). The Complainant filed a complaint with this Office, alleging that the privilege had been waived. The Commissioner found that the privilege had not been waived and recommended that the Town continue to withhold the record.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), S.N.L. 2015, c. A-1.2, sections 9, 30.

Authorities Relied On:

NL OIPC Report [A-2017-001](#); Ontario OIPC [Order MO-1172](#); [Imperial Tobacco Co. v. Newfoundland and Labrador \(Attorney General\)](#), 2007 NLTD 172

I BACKGROUND

- [1] The Complainant made an access request to the Town of St. George's ("the Town") under the *Access to Information and Protection of Privacy Act, 2015* ("ATIPPA, 2015" or "the Act") for a legal opinion from the Town's solicitors. The Town refused to disclose it, based on section 30 of the Act (solicitor-client privilege).
- [2] The Complainant filed a complaint with this Office on June 16, 2020. As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

II PUBLIC BODY'S POSITION

- [3] The Town states that the legal opinion was not tabled or distributed at a public meeting, but was discussed only in a privileged meeting of Council, from which the public was excluded. Reference to the legal opinion in a public meeting did not constitute a waiver.

III COMPLAINANT'S POSITION

- [4] The Complainant argued that the Town has waived solicitor-client privilege by referring to the legal opinion in a public meeting on June 1, 2020.

IV DECISION

- [5] There is no dispute that the record requested by the Complainant is a legal opinion, which consists of a communication between the Town and its solicitor containing legal advice, nor that this record would ordinarily be covered by the legal advice exception to disclosure. The sole issue is whether the privilege has been waived by the Town.
- [6] Waiver of solicitor-client privilege must be done either explicitly, or implicitly by an act that demonstrates an intention to waive the privilege (Report A-2008-007; *Imperial Tobacco Co v.*

Newfoundland and Labrador (Attorney General)). If Council had tabled the opinion, or had discussed its contents in detail, there would be an argument that privilege had been waived.

[7] The legal opinion was not tabled or distributed at the public meeting. It was discussed only internally, in a privileged meeting of Council, from which the public was excluded. Discussion in a privileged meeting is not sufficient to constitute a waiver.

[8] Council was required by section 215 of the *Municipalities Act* to ratify any decision made in a privileged meeting, by passing a motion in a public meeting. That was done in the public meeting on June 1, 2020 in the following terms:

“Be it resolved that Council accepts the legal opinion that no further action is required as there is no basis for the conflict of interest complaint received by Council dated 16 April 2020 against Councillor Fleming.”

[9] The motion referred to the fact that the Town had received a legal opinion, and also disclosed the conclusion of the legal opinion. The case law is clear that simply disclosing the conclusion or “bottom line” of a legal opinion does not constitute a waiver of privilege (Ontario OIPC Order MO-1172).

[10] By wording the motion in the way that it did, Council made clear that the Town had sought a legal opinion on the matter, and was now acting on that legal advice. This is consistent with the duty of a public body to be transparent and accountable to the public.

[11] Since the privilege was not waived, the section 30 exception to disclosure was properly applied.

V RECOMMENDATIONS

[12] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Town of St. George’s continue to withhold the records at issue in this complaint.

[13] As set out in section 49(1)(b) of *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 within 10 business days of receiving this Report.

[14] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of August, 2020.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador