



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2021-002

January 13, 2021

Municipal Assessment Agency

Summary: The Municipal Assessment Agency (“MAA”) received an access to information request under the *Access to Information and Protection of Privacy Act, 2015*, (“*ATIPPA, 2015*” or “the Act”) for information regarding four properties. MAA provided the Complainant with a package of documents. Some information in the documents was redacted per sections 39(2) (information that was obtained on a tax return) and 40(4)(d) (personal information gathered for the purpose of collecting a tax) of the Act. The Complainant made a complaint to this Office requesting that they be provided with the unredacted records. The Commissioner found that the exceptions in sections 39(2) and 40(4)(d) had been properly applied and recommended that the Agency continue to withhold the information.

Statutes Cited: [Access to Information and Protection of Privacy Act, 2015](#), S.N.L. 2015, c. A-1.2, sections 39 and 40.

[Assessment Act, 2006](#), S.N.L. 2006, c. A-18.1, sections 3, 7, 8, 44, and 47.

I BACKGROUND

- [1] The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or “the Act”) to the Municipal Assessment Agency (“MAA”) for the following:

Complete copy in any format (electronic or paper) plot plans, surveys, location certificates, drawings, sketches, diagrams etc and Parcel ID numbers for:

- 1) [street address 1] [named municipality]*
- 2) [street address 2] [named municipality]*
- 3) [street address 3] [named municipality]*
- 4) [street address 4] [named municipality]*

- [2] MAA responded to the request and provided a final response and responsive records, however some information was redacted under sections 39(2) (information obtained on a tax return) and 40(4)(d) (personal information gathered for the purpose of collecting a tax) of *ATIPPA, 2015*.
- [3] The Complainant made a complaint to this Office regarding the redactions. 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

- [4] MAA stated that the redacted information was collected for the purpose of allowing municipalities to determine property values, and in turn determine property tax liabilities. The information was collected solely for the purpose of determining taxation and is not otherwise publically available. Further, MAA submits that the information relates to individuals’ residences and is therefore personal information, and this personal information was gathered by MAA for the purposes of collecting a tax. As such, MAA submits that the information is not releasable per sections 39(2) and 40(4)(d) of *ATIPPA, 2015*.

III COMPLAINANT'S POSITION

- [5] The Complainant argued that because the information is held by a government body, and the government body is funded by taxpayer money, they should be entitled to receive unredacted copies of the records.

IV DECISION

- [6] MAA is the agency tasked with gathering information and determining the value of real property in most areas of Newfoundland and Labrador. MAA follows the process set out in the *Assessment Act, 2006*. This valuing of real property is essential for municipalities as those values are used to determine property tax liabilities of property owners.
- [7] Section 3 of the *Assessment Act, 2006* governs the collection of information for the purposes of assessing property taxes. Sections 7 and 8 specifically require property owners to allow access to real property at the request of an assessor and makes it mandatory for an owner or occupier of a property to provide all requested information necessary for an assessor to make an assessment. Section 47 further creates an offence for refusing entry or refusing to provide requested information. Section 44 makes it an offence to disclose certain information contained in MAA's records, particularly information that is not required to be entered into the municipal tax roll and is not a matter of public knowledge.
- [8] In addition to information gathered by MAA's field assessors and information provided by owners or occupiers of property, other information is obtained directly from municipalities and from the Newfoundland and Labrador Registry of Deeds.
- [9] MAA provided the Complainant with all the information from its internal records that is publically available or easily observable, including: property address, municipality, dimensions of the parcel of land, number of stories, owner, parcel ID, previous assessed values, and year built. The redacted information is that information which is not available publically, such as the internal dimensions of buildings; number and types of rooms or additions; types of heating; and draft sketches by field assessors. As this information was collected for the

purpose of determining tax liability and the collection of a tax, and is not otherwise publically available, it is protected under both sections 39(2) and 40(4)(d). The relevant portions of those sections are as follows:

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.

(3) Subsections (1) and (2) do not apply where

(a) the third party consents to the disclosure; or

(b) the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.

And

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.

...

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

(d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;

[10] Both section 39(2) and 40(4)(d) are mandatory exceptions to disclosure. Section 39(3) does override 39(2) in cases where the third party consents to disclosure or the record is in the custody or control of the archives of a public body and has been in existence for 50 years or more – neither of which apply to the present matter. The presumption that a disclosure of

personal information under section 40(4) is an unreasonable invasion of personal privacy is rebuttable under section 40(5), which states:

40. (5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;

(b) the disclosure is likely to promote public health and safety or the protection of the environment;

(c) the personal information is relevant to a fair determination of the applicant's rights;

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;

(e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence;

(g) the personal information is likely to be inaccurate or unreliable;

(h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;

(i) the personal information was originally provided to the applicant; and

(j) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

[11] As section 39(2) is mandatory and not overridden in this case, it is sufficient to support the withholding of the redacted information. Nonetheless, MAA provided evidence that it considered section 40(5) and concluded that the balance of evidence did not support rebutting the presumption against disclosure set out in section 40(4)(d).

V RECOMMENDATIONS

[12] Under the authority of s. 47 of the *Access to Information and Protection of Privacy Act, 2015*, I recommend that the Municipal Assessment Agency continue to withhold the records.

[13] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Municipal Assessment Agency 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 13th day of January, 2021.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador