



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2021-020

May 7, 2021

Newfoundland and Labrador Legal Aid Commission

Summary:

The Legal Aid Commission received an access to information request for the names and contact information of its appeals review board members. The Legal Aid Commission provided the names but not the contact information, citing section 40 of the *Access to Information and Protection of Privacy Act, 2015* (disclosure harmful to personal privacy). The Commissioner concluded that the Legal Aid Commission properly withheld the contact information in accordance with section 40 and this information should continue to be withheld from disclosure.

Statutes Cited:

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

Authorities Relied On:

NL OIPC Report [A-2016-021](#); [Use of Personal Email Accounts for Public Business](#).

I BACKGROUND

- [1] The Complainants made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or the “*Act*”) to the Newfoundland and Labrador Legal Aid Commission for the names and contact information of members of its appeal board who heard their appeal of a Legal Aid Commission determination on a matter involving them.
- [2] The Legal Aid Commission provided the Complainants with the names of all board members and indicated the three members specifically involved in reviewing their appeal, but refused to provide contact information for any of the board members, citing section 40 (disclosure harmful to personal privacy).
- [3] 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] The Legal Aid Commission submitted it has a board of nine members, two of whom are *ex officio* members (an Assistant Deputy Minister from the Department of Justice and Public Safety and the Provincial Director of the Legal Aid Commission). The Legal Aid Commission further advised that the remaining seven members “are private citizens who work in a volunteer capacity with nominal compensation for actual time spent to attend meetings.” The board of nine meets once a month and, where needed, establishes a sub-committee of three members to hear any appeals on the same day as the board meeting.
- [5] The Legal Aid Commission argued that the contact information of these board members is personal and confidential as these individuals have provided their personal or work email addresses and telephone numbers. They do not have separate email accounts or telephone numbers for their work with the Legal Aid Commission.

[6] Additionally, the Legal Aid Commission noted that it had also strived to offer alternatives to address the Complainants concerns short of providing the contact information of the individual board members. Namely, it addressed the Complainants' stated reason for seeking contact information (to enable them to contact board members for answers regarding specifics of their appeal), by responding to clarify and explain the appeal board's limited jurisdiction in hearing appeals cases; and providing the Complainants with a detailed decision letter along with the opportunity to appeal the decision on their new application, which would allow them to meet with the appeal board again so they could share their concerns and make their case for legal representation. The Legal Aid Commission submitted that it had even offered to waive the requirement that the Complainants file a formal appeal form and instead accept an email response as adequate to proceed with scheduling the Complainants' appeal with the appeal board. Finally, it offered the Complainants an opportunity to send the concerns they wished to share with board members to the Legal Aid Commission by email, providing assurances that any such correspondence would be forwarded directly to the board.

III COMPLAINANTS' POSITION

[7] The Complainants sought the names and contact information of the board members as a whole, and specifically those involved in the final hearing of their case. They submitted that having this information was necessary for them to be able to follow up with the board regarding ongoing concerns they have about the determination in their matter.

IV DECISION

[8] The relevant subsections of section 40 of *ATIPPA, 2015* are:

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.

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

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(f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;

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;

(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

(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;

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

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

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

[9] At issue is the contact information for the three members of the appeal board which heard the Complainant's matter. As noted above, the Legal Aid Commission has already identified the three members to the Complainants. Of the three members of the board, one is a representative from the community who uses a personal email account for board business,

one is a lawyer in private practice who uses their law firm's email account, and one is another lawyer, employed by the Government of Newfoundland and Labrador (but not the Legal Aid Commission) who also uses their work email account.

[10] On its face, the contact information of the board appears to fall under the umbrella of section 40(1) given it is personal information as defined by *ATIPPA, 2015*. Of the provisions at section 40(2) which deem a disclosure to not be an unreasonable invasion of personal privacy, only section 40(2)(f) bears consideration. While board members are not employed by the Legal Aid Commission and do not have Legal Aid Commission email accounts or other means of contact provided by the public body, they are appointed on a voluntary basis and provided some remuneration for their services. This Office has previously found that contact information is information about a third party's position with a public body under section 40(2)(f). In one case, the member's contact information is related to their regular employment with another public body. If a request were made to that public body for the member's contact information, section 40(2)(f) would clearly require that it be disclosed. However, in the present matter the contact information is not about the Legal Aid Commission board, such as a public body-provided email address or phone number. Given this, the contact information at issue is not captured by section 40(2)(f).

[11] Having found that the contact information is personal information, but not that it falls under section 40(2), we have to look additionally to sections 40(4) and 40(5). The relevant subsections for consideration are 40(4)(c) and (g) and 40(5)(a), (c), (e) and (f).

[12] As noted above, the contact information used by board members consists of their personal email addresses or telephone numbers, or those for their places of employment. For the latter, disclosing this information would be an unreasonable invasion of the members' privacy as it speaks to their employment history separate from their participation on the board itself. For those members who use their private email addresses or telephone numbers, providing the Complainants both their names and this contact information would also be an unreasonable invasion of their privacy. This information fits directly with the description of 40(4)(g); that is, the names would appear with additional personal information about the third parties.

[13] Additionally, the Legal Aid Commission submitted it is of the position that the board members' contact information was supplied to it in confidence and it is concerned about releasing this publicly and how this information might be abused by exposing board members directly to various requests and demands which could be harmful to their work or potentially their safety. While insufficient evidence was provided to make out a finding of potential harm, it does appear that the contact information was provided to the Legal Aid Commission in confidence.

[14] In terms of those considerations under section 40(5) that speak to the Complainants' right to the information, subsections (a) and (c) must be considered. The Complainants have provided no real information to support either subsection, and the Legal Aid Commission has provided detailed submissions to demonstrate neither is impacted by withholding the board members' contact information. There is no further avenue for the Complainants to challenge the board's denial beyond the decision, but Legal Aid had provided them with several alternatives both to passing along their concerns to the board, as well as to resubmit a separate appeal to allow them to go back before the board where they could present their concerns directly.

[15] Another relevant consideration is that, for two of the three members of the committee, the requested contact information is already publicly available. Even if it weren't already publicly available, for the member who is an employee of another public body, there is no doubt that their contact information would be released if an access to information request were made directly to their employer.

[16] The fact that some of the information sought by the Complainants is publicly available is something of a double-edged sword as section 22 allows a public body to refuse to disclose information which is already published and available to the public. The Legal Aid Commission might have considered relying on this provision of *ATIPPA, 2015* in its response. However, it did not and we are unable to recommend that information be withheld on this basis.

[17] For the member who provided a personal email address to the Legal Aid Commission for board business, I am satisfied that the disclosure of this personal information would be an

unreasonable invasion of their personal privacy. For two of the three members, their contact information is already available to the public. For one of those members, their contact information is related to their position as an employee of a public body. These considerations would typically lend themselves towards a finding that it would not be an unreasonable invasion of their personal privacy to release this personal information. However, at issue are the three members of the committee who heard the Complainants' appeal and I am reluctant to treat the board members differently simply because their employment situations, and the kind of contact information they have provided to the Legal Aid Commission in connection with their role on its board, varies from member to member.

[18] Based on the above analysis and considerations, the Legal Aid Commission properly applied section 40(1) to withhold the contact information of its board members and should continue to withhold this contact information. We can see no valid arguments under section 40(5) to warrant disclosure, particularly given the steps taken by the Legal Aid Commission to offer the Complainants other routes to filing a new appeal and to be able to present their concerns to the board.

[19] However, on the subject of the use of private email accounts by officers or employees of public bodies, it bears repeating that this Office has previously found that a record may be deemed to be in the control of a public body and thus subject to access to information requests where public body business is being conducted via personal e-mails. Report A-2016-021 noted:

[16] There is no doubt that such personal e-mails would be subject to the ATIPPA, 2015. As this Office has stated in a guideline issued in June 2016, and posted on the OIPC website, the ATIPPA, 2015 applies to any records, created or received by officers and employees of public bodies in the course of their duties, which relate to the business of the public body, including those created or received on personal e-mail accounts.

[20] We have further discussed the implications of using personal e-mail accounts for public body business in our guidance document, *Use of Personal Email Accounts for Public Business*. The Legal Aid Commission indicated that it has considered providing its board members with Legal Aid Commission email accounts and this Office would encourage it to review the above-

noted decision and guidance document and to further explore the feasibility of implementing such a practice.

V RECOMMENDATIONS

[21] Under the authority of section 47 of *ATIPPA, 2015*, I recommend the Legal Aid Commission continue to withhold the contact information of its appeal board members in accordance with section 40.

[22] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Legal Aid Commission must give written notice of his or her decision with respect to this recommendation to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[23] Dated at St. John's, in the Province of Newfoundland and Labrador, this 7th day of May 2021.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador