



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2021-028

June 18, 2021

Town of Paradise

Summary:

The Complainant submitted an access to information request to the Town of Paradise under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015”) seeking records as well as answers to several questions regarding the Town’s finances and decisions taken by the Town. The Town responded by providing records and answering most questions posed in the access to information request. However, several records were not provided and some questions remained, in the view of the Complainant, unanswered. The Commissioner recommended that the Town provide records from its assessment rolls, while continuing to withhold tax information. The Commissioner also concluded that some information sought by the Complainant was outside of the scope of his access to information request as it was submitted to the Town.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 39 and 40.

[Municipalities Act, 1999](#), SNL 1999, c M-24, section 215.

Authorities Relied On:

NL OIPC Reports [A-2012-001](#), [A-2017-002](#).

I BACKGROUND

[1] The Complainant made an access to information request to the Town of Paradise (the “Town”) under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015”) seeking records on a number of topics and answers to several questions about the Town’s finances and matters from a September, 2020 council meeting.

[2] The Town of Paradise provided responsive records and, in some instances, answers to questions posed by the Complainant.

[3] The Complainant was not satisfied with the response from the Town and filed a complaint with this Office, alleging that the Town had failed to adequately respond to two parts of his access to information request, which read:

...

7. In the public meeting minutes of Sept. 15/20 it was recorded that an Order was issued on Sept. 11/20 to remove a container from the property of [address]

(a) Please provide a copy of the Order.

(b) Who was it issued to?

(c) Who is the owner of the vacant property at [address]?

(d) Has there been any property tax bills issued to the owner of the vacant property?

(e) Are there any outstanding property taxes owing on the vacant property of [address]? If so, how much?

...

9. How much was the total salary of the original Director of Infrastructure and Public Works reduced when there was a new Director of Public Works? What is the salary for the new Director of Public Works?

[4] During our investigation, the Town provided the Complainant with a copy of the order referenced in items 7(a) and 7(b) and those matters were resolved. However, as other matters remained outstanding, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

II PUBLIC BODY'S POSITION

- [5] The Town's position is that section 215 of the *Municipalities Act, 1999* provides for access to a municipality's assessment rolls by allowing the public to view the rolls at the Town's offices. The Town's position is that while the names of property owners are indicated on the assessment roll, tax arrears in relation to that property are personal information that should be withheld.
- [6] With regard to the Complainant's requests about the salaries for the director positions, the Town's position is that it has responded to the Complainant's access to information request as it was submitted.

III COMPLAINANT'S POSITION

- [7] The Complainant believes that the Town has not responded to his inquiries regarding the salaries of the two director positions. Having learned that the salary for the former Director, Infrastructure and Public Works position has increased, when he had expected that it should have been decreased, he now submits that the Town ought to provide an explanation for why the salary was increased.
- [8] The Complainant is aware that some information regarding the property identified in item 7 is available through the Town's assessment roll which can be viewed at the Town's offices. However, he objects to being required to attend at the Town's offices to do so. Regarding tax arrears, the Complainant submits that if he can't be provided with the amount of any tax arrears he would like to receive a yes or no answer as to whether there are any tax arrears owing. Further, the Complainant now requests information regarding the Town's general policy of taxing vacant property.

IV ISSUES

- [9] This Report must address the following outstanding issues:
- a. Whether the Town is required to disclose the name of the owner of a property and details of any tax arrears owed by the owner of the property, and
 - b. Whether the Town has responded to the Complainant's request regarding the salaries of the two director positions.

V DECISION

[10] In item 7 of his access to information request, the Complainant has sought information relating to a specific property in the Town of Paradise and an order issued to its owner in September of 2020. The Complainant has since received a copy of the Order and what remains are his questions about the owner, any tax bills issued relating to the property, and whether there are any outstanding taxes owing on the property.

[11] As noted above, the Town takes the position that information regarding the ownership of the property, and its assessed value, is available to the public as section 215 of the *Municipalities Act, 1999* provides for public inspection of assessment rolls:

Inspection of documents

215. (1) The following documents shall be made available by the council for public inspection during the normal business hours of the council:

- (a) adopted minutes of the council;*
- (b) assessment rolls;*
- (c) regulations;*
- (d) municipal plans;*
- (e) opened public tenders;*
- (f) financial statements;*
- (g) auditor's reports;*
- (h) adopted budgets;*
- (i) contracts;*
- (j) orders;*
- (k) permits; and*
- (l) Rep. by 2000 c16 s2*

(m) all other documents tabled or adopted by council at a public meeting.

(2) A person making an inspection under subsection (1)

(a) shall not remove the document from the place where it is located or interfere with an employee of the council in the performance of his or her duties; and

(b) may make extracts from the documents, and may, where the council has copying equipment, have a copy made of the documents upon payment of a fee equal to the actual cost of providing that copy.

[12] Section 5(2)(a) of *ATIPPA, 2015* states:

(2) This Act

(a) is in addition to existing procedures for access to records or information normally available to the public, including a requirement to pay fees;

As such, it would be incorrect to conclude that because the assessment rolls – as well as other records, such as council minutes, plans, contracts, and orders – are available to the public by virtue of the *Municipalities Act, 1999*, then they are not subject to being disclosed in response to an access to information request.

[13] However, section 3(3) also provides:

(3) This Act does not replace other procedures for access to information or limit access to information that is not personal information and is available to the public.

[14] These two provisions were present in the former *Access to Information and Protection of Privacy Act* and in Report A-2012-001 this Office concluded that their combined effect was that where other procedures for access to records exist, such as that provided here by the *Municipalities Act, 1999*, the application of *ATIPPA, 2015* is limited to the protection of personal information in accordance with section 40 (disclosure harmful to personal privacy). As stated by the former Commissioner: “In other words, if another Act requires a public body to make information available, you cannot use the *ATIPPA* to deny access to that information, unless it is personal information.”

[15] The information sought is specifically the name of the owner of the property, which is personal information and therefore section 40 must be considered:

Disclosure harmful to personal privacy

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.

[16] However, not all personal information must be withheld, and section 40(2) provides for several scenarios where the disclosure of personal information is deemed to not be an unreasonable invasion of privacy:

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

*...
(d) an Act or regulation of the province or of Canada authorizes the disclosure;*

[17] Given that section 215 of the *Municipalities Act, 1999* authorizes a municipality to disclose information contained within its assessment rolls, including the name of the owner of a property and its assessed value, we conclude that, per section 40(2)(d) of *ATIPPA, 2015*, the disclosure of this information in response to an access to information request is not an unreasonable invasion of personal privacy.

[18] As to the question of any tax bills issued to the owner of the property and any tax arrears, this Office previously addressed access to such information in A-2017-002, where records of properties with arrears in excess of \$10,000 were sought from the City of St. John's. In that report, this Office concluded that the names and address of both individual and corporate taxpayers are gathered for the purpose of collecting a tax and are properly withheld under section 39(2) (disclosure harmful to business interests of a third party). We reach the same conclusion in the present complaint, and the Town should not disclose the requested information.

[19] In subsequent correspondence with this Office, the Complainant has raised an interest in knowing the Town's policy with regard to taxing vacant properties generally. However, this is

outside of the scope of his access to information request, which sought records relating to taxes assessed, and possibly in arrears, on a particular property. The Complainant is advised to consider a new access to information request to the Town for this information.

[20] On the second outstanding issue, being item 9 in the Complainant's access to information request, the Complainant sought information related to the creation, in 2020, of two new director-level positions to replace the former Director, Infrastructure and Public Works. As noted above, the Complainant's request asked for the salaries of the two positions.

[21] The Town provided the Complainant with records indicating the 2020 salary for the position of Director, Infrastructure and Public Works. The records further indicate the 2021 salaries for the new positions of Director, Infrastructure and Engineering and Director, Public Works following their reorganization.

[22] In his access to information request, the Complainant had assumed that the salary for the Director, Infrastructure and Public Works position had been reduced in the Town's reorganization. This was not the case, as demonstrated by the records disclosed to the Complainant by the Town. The Complainant now seeks to know why the salary was not decreased. Much like his inquiries regarding the Town's policies regarding the taxation of vacant properties, this is a new request wholly different than what was put to the Town in the access to information request. While section 13 imposes on a public body a duty to assist an applicant and to confirm and clarify the nature of an access to information request, we are satisfied that the Complainant's present questions about why the salary changed is outside of the scope of the original request. The Complainant is similarly advised to submit a new access to information request to the Town specifically seeking records relating to the reorganization of these positions and the determination of their salaries.

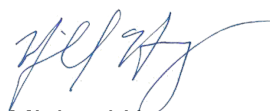
VI RECOMMENDATIONS

- [23] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Town of Paradise:
- a. Release information from its assessment rolls regarding the identified property, and
 - b. Continue to withhold information regarding tax arrears.

[24] Having concluded that the Town has responded adequately to the Complainant's requests with regard to the director position salaries and tax arrears, we recommend that the Town of Paradise maintain its position regarding these matters.

[25] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Town of Paradise 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.

[26] Dated at St. John's, in the Province of Newfoundland and Labrador, this 18th day of June, 2021



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador