



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2021-030

June 30, 2021

Department of Digital Government and Service NL

Summary:

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”) to the Department of Digital Government and Service NL (“DGSNL”) for records that would assist the Complainant in enforcing a Provincial Court of Newfoundland and Labrador small claims judgment in his favour. DGSNL refused to provide the requested records citing sections 173.1 and 174 of the *Highway Traffic Act* and section 40 of *ATIPPA, 2015* (disclosure harmful to personal privacy). The Commissioner determined that section 40 applied to the records and recommended that DGSNL continue to withhold them.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 5(2), 7(2) 40, and 68.

[Small Claims Act](#), RSNL 1990 c. S-16.

[Small Claims Rules](#), NLR 52/97.

[Judgment Enforcement Act](#), SNL 1996 c. J-1.1.

I BACKGROUND

- [1] In June 2019, the Complainant obtained a judgment from the Provincial Court of Newfoundland and Labrador against a debtor under the *Small Claims Act*. In August 2019, they attempted to begin enforcement action against the debtor by involving the Office of the High Sheriff. The Complainant was advised that seizure and sale of the debtor's motor vehicles was the best enforcement option. In order to do so, the Complainant was asked to provide the particulars of any vehicles registered to the debtor.
- [2] Since that time, despite involving a lawyer and contacting various individuals within the Government of Newfoundland and Labrador, the Complainant has not been able to get the necessary particulars from the Motor Registration Division of the Department of Digital Government and Service NL ("DGSNL").
- [3] On January 12, 2021 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 DGSNL for information related to any motor vehicle registered to the debtor. DGSNL refused to provide the information, at first citing schedule A of *ATIPPA, 2015* in conjunction with sections 173.1 and 174 of the *Highway Traffic Act*, and then relying on section 40 of *ATIPPA, 2015*.
- [4] 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

- [5] DGSNL has refused to provide the requested records to the Complainant due to section 40 and Schedule A of *ATIPPA, 2015*, in conjunction with sections 173.1 and 174 of the *Highway Traffic Act*.

[6] DGSNL has said that if the order issued by the Provincial Court of Newfoundland and Labrador required the information to be disclosed then it would do so, but without specific wording requiring the records to be released, they cannot release the records.

III COMPLAINANT'S POSITION

[7] The Complainant asserts that because they have a court order against the debtor, they are entitled to the information required to enforce that order. They did note that they did not need to personally receive the information; and they would be satisfied if DGSNL provided the information directly to the Office of the High Sheriff.

[8] The Complainant argued that because they have a court order they should be entitled to the information, however the judgment does not specifically mention disclosure or specific methods of enforcement

IV ISSUES

[9] The issues to be considered in this report are:

1. Has DGSNL appropriately applied section 40 of *ATIPPA, 2015*?
 - a. Has DGSNL considered the application of section 40(5)?
2. Do sections 173.1 and 174 of the *Highway Traffic Act* apply to the requested records?

V DECISION

[10] In its formal response to the Complainant's access to information request, DGSNL claimed sections 173.1 and 174 of the *Highway Traffic Act* as the reason for withholding the records. These provisions of the Highway Traffic Act are included in Schedule A to *ATIPPA, 2015* and, by virtue of section 7(2) (conflict with other Acts), prevail over *ATIPPA, 2015*. In its submissions to this Office during this investigation, DGSNL decided to add, and primarily rely on, section 40 of *ATIPPA, 2015*.

[11] As noted in previous reports this Office sometimes refuses to consider late-claimed exceptions as public bodies should claim all relevant exceptions when responding to access requests. Furthermore, it could be considered prejudicial to the Complainant to have to consider and respond to additional exceptions late in the investigation. In this matter, DGSNL raised the applicability of section 40 at the first possible opportunity in the investigation. Given the early raising of the exception, and the mandatory nature of the exception, this Office has determined that it is appropriate to consider the exception.

[12] Section 40 deals with disclosure of information harmful to personal privacy. Of particular relevance to this matter are sections 40(1) and 40(4)(g), which state:

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
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

[13] As the requested records contain the name or address of the debtor, and the details of the motor vehicles registered to them, section 40(4)(g) would apply. While DGSNL did not specifically address the considerations under section 40(5), the balance of considerations does not support overriding the exception. It could be argued that section 40(5)(c) (fair determination of the applicants rights) could apply; however, it can also be argued that the Complainant's rights have already received a fair determination by virtue of having been heard by the Provincial Court of Newfoundland and Labrador and a judgment issued accordingly. Even if this information were relevant to a fair determination of the Complainant's rights, this would not necessarily outweigh the debtor's privacy interest in the records.

[14] Further, it is important to note that the Complainant has other avenues to obtain the information required to enforce the judgment, and the *Small Claims Rules* specifically provide

for a judgment creditor to request a payment hearing and to obtain the requested information directly from the judgment debtor.

[15] As section 40 is sufficient to require DGNSL to withhold the records, it is not necessary to consider sections 173.1 and 174 of the *Highway Traffic Act*.

[16] As noted above, the Complainant submits that the order from the Provincial Court of Newfoundland and Labrador should be sufficient to require DGSNL to release the information. Section 68(1)(e) of *ATIPPA, 2015* does allow a public body to disclose information in response to a court order and, as noted above, DGSNL has indicated its willingness to do should they be provided with an order clearly requiring such disclosure. Having reviewed the order this Office is satisfied that the order as it is currently written does not require DGSNL to disclose the requested information.

[17] It may seem counter-intuitive that, in a situation where the Complainant has a court order and has been advised that information is necessary to enforce that order, that *ATIPPA, 2015* cannot be an avenue to get this information. However, *ATIPPA, 2015* is not designed to be part of the small claims court process. It is understandable that the Complainant is frustrated that they have not yet been able to obtain the information required to enforce the judgment; but *ATIPPA, 2015* must be interpreted as it is written, as inconvenient as that may be for the Complainant in this case. Moreover, as mentioned above, there are other avenues available to obtain the information sought by the Complainant.

VI RECOMMENDATIONS

[18] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Department of Digital Government and Service NL continue to withhold the records at issue in this complaint.

[19] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Digital Government and Service NL 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.

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 30th day of June 2021.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador