



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**A-2021-048**

**December 8, 2021**

**City of St. John's**

**Summary:**

The Complainant made an access to information request to the City of St. John's pursuant to the *Access to Information and Protection of Privacy Act, 2015* ("ATIPPA, 2015"). The City declined to provide the records based on section 28 (local public body confidences). The Complainant made a complaint to this Office. The Commissioner determined that section 28 had been appropriately applied and that the test for section 9 (public interest override) had not been met. The Commissioner recommended the City continue to withhold the records.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 9 and 28.

[City of St. John's Act](#), RSNL 1990, c-17, sections 38 and 40.

**Authorities Relied On:**

NL OIPC Report [A-2017-018](#).

## 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 City of St. John’s (the “*City*”) for the following records:

*Minutes of the Special Meeting of Council re [business name] (date: August 2021).*

- [2] The City responded to the request by denying access to the records under section 28(1)(c) (local public body confidences) of the *Act*. The Complainant made a complaint to this office regarding the refusal.
- [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 City submits that section 28(1)(c) was properly applied and the decision to withhold the records is appropriate as the records related to the substance of deliberations of a privileged meeting of council, which was authorized by the *City of St. John’s Act*, at sections 38 (public meetings) and 40 (special meetings).

## III COMPLAINANT’S POSITION

- [5] The Complainant believes they are entitled to the information on the general basis of freedom of information. They also submit that the meeting was regarding their business so they should be provided with the records.

## IV DECISION

- [6] The primary section of the *Act* to be considered is section 28(1)(c) which states:

*28. (1) The head of a local public body may refuse to disclose to an applicant information that would reveal*

*c) the substance of deliberations of a meeting of its elected officials or governing body or a committee of its elected officials or governing body, where an Act authorizes the holding of a meeting in the absence of the public.*

[7] As per Report A-2007-018, for the section to apply, the following 3 criteria must be met:

- 1) Whether legislation authorizes the holding of a privileged meeting;
- 2) Whether there is evidence that the meeting in question was held as a privileged meeting; and
- 3) Whether the information contained within the record of the meeting would, if disclosed, reveal the substance of deliberations of Council.

[8] The *City of St. John's Act* authorizes the City's Council to hold privileged meetings under both sections 38 and 40.

*38. Meetings of the council shall be held in public unless a meeting is called as a special or privileged meeting or declared by a vote of the council at a meeting to be a special or privileged meeting, in which case all members of the public present shall leave.*

*40. Special or privileged meetings of the council may be called at the times that the mayor may consider necessary, or on the written request of 3 members of the council.*

[9] The meeting to which the minutes relate was held as a special meeting (as evidenced by the wording of the request). As well, the City has provided evidence that the meeting in question was, in fact, a properly constituted special meeting.

[10] Finally a review of the records confirms that the records contain information that, if disclosed, would reveal the confidential deliberations of Council.

[11] As all three required criteria are met in this case the City's application of section 28(1)(c) is appropriate.

[12] Section 8(2) requires a public body to sever information excepted from disclosure when it is reasonable to do so. In this case, the City has withheld the responsive records in their entirety rather than doing a line-by-line review and redacting specific information. Section 28

is an information-level, as opposed to record-level exception that would ordinarily require such a line-by-line review. However, having reviewed the responsive records, it would not be reasonable to redact the records on a line-by-line basis as the information remaining after such an exercise would be very limited and of no value.

[13] The final consideration is section 9. This section provides for the release of information withheld under particular sections *if* it is clearly demonstrated that the public interest in the disclosure of the information outweighs the reason for the exception. The reason for this exception is to ensure that elected officials and governing bodies can meet privately when necessary to engage in frank discussions. Having reviewed the factors to be considered there is no evidence that the public interest is engaged.

## V RECOMMENDATIONS

[14] Under the authority of section 47 of *ATIPPA, 2015* I recommend that the City of St. John's continue to withhold the requested records.

[15] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the City of St. John'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.

[16] Dated at St. John's, in the Province of Newfoundland and Labrador, this 8<sup>th</sup> day of December 2021.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador