



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2022-003

March 2, 2022

Department of Municipal and Provincial Affairs

Summary:

The Complainant submitted a request under the *Access to Information and Protection of Privacy Act, 2015* to the Department of Municipal and Provincial Affairs for records of an investigation. The Department provided responsive records, with redactions under section 30(2) (legal advice) and 40(1) (disclosure harmful to personal privacy). The Complainant objected to the redactions. During the complaint investigation the Department agreed to provide additional information to the Complainant. The Commissioner found that the remaining redactions were properly applied and recommended that the Department continue to withhold that information.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 30 and 40.

I BACKGROUND

- [1] The Complainant made a request under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or the “*Act*”) to the Department of Municipal and Provincial Affairs (the “*Department*”) for records of an investigation involving a municipality. The Department provided responsive records, severing some information pursuant to sections 30(2) (legal advice) and 40(1) (disclosure harmful to personal privacy).
- [2] The Complainant objected to these redactions. During our investigation, the Department agreed to remove some redactions and provided a revised set of records to the Complainant. Some information, however, remains redacted.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

II DECISION

- [4] The only issues to be dealt with in this Report are whether the remaining redactions have been appropriately applied.
- [5] Unlike section 30(1), which is a discretionary exception to access, section 30(2) requires the withholding of information that is subject to solicitor-client privilege. Typically, this covers communications between a solicitor and the client, related to the seeking or providing of legal advice, and also covers communications containing legal advice, between members of the client’s organization or to a related third party.
- [6] In the course of the investigation, the OIPC advised the Department that some of the redacted information, such as statements by the municipality about the administrative authority to engage legal counsel, is not privileged and should not have been redacted. The Department agreed, and provided that information in the revised records. A number of other pages, however, consist of correspondence between the municipality and a law firm, or

statements about the legal advice obtained, and we conclude that they are communications to which the privilege applies. That information therefore must remain redacted.

- [7] Section 40 requires the withholding of personal information when its disclosure would be an unreasonable invasion of privacy. However, the disclosure of names of employees of a public body, for example, is deemed not to be an invasion of privacy. Through the informal process, the Department determined that business information, such as the identity of a land surveyor, or the address to which a building permit applies, was not personal information. Accordingly, the revised copy of the records disclosed such information. Other personal information remains redacted.

III RECOMMENDATIONS

- [8] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Department of Municipal and Provincial Affairs continue to withhold the information it redacted from the revised responsive records.
- [9] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Municipal and Provincial Affairs 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.
- [10] Dated at St. John's, in the Province of Newfoundland and Labrador, this 2nd day of March 2022.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador