



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2022-017

September 9, 2022

Department of Justice and Public Safety

Summary:

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* to the Department of Justice and Public Safety for records relating to his incarceration. The Department provided records but severed some information, claiming sections 31 (disclosure harmful to law enforcement), section 40 (disclosure harmful to personal privacy) and section 41 (disclosure of House of Assembly service and statutory office records). The Commissioner determined that the exceptions were properly applied and recommended that the Department continue to withhold the redacted information.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 31, 40, 41.

Authorities Relied On:

NL OIPC Report [A-2021-006](#).

BACKGROUND

- [1] The Complainant, an inmate at Her Majesty's Penitentiary ("HMP") made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* ("ATIPPA, 2015" or the "Act") to the Department of Justice and Public Safety ("JPS" or the "Department") for all records relating to his incarceration between specific dates.
- [2] The Department provided 66 pages of records, but withheld some information, including some full pages, claiming exceptions to access under sections 31 (disclosure harmful to law enforcement), section 40 (disclosure harmful to personal privacy) and section 41 (disclosure of House of Assembly service and statutory office records). The Complainant, through his solicitor, objected to the redactions and filed a complaint with this Office.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [4] The Department explained its rationale for withholding the redacted information, submitting that the exceptions had been applied sparingly and appropriately, and were essential to ensuring the safety of all individuals within HMP.

COMPLAINANT'S POSITION

- [5] The Complainant argued that the redactions were an overreach by the Department, stating that the information requested is essential to ensuring the Complainant's immediate and longer term safety, and asking that the redactions be reviewed.

DECISION

- [6] The responsive records are all internal administrative records in the custody of HMP, for which JPS is the responsible Department. The records include: Provincial Corrections Offender

Management System (PCOMS) Unit Notes (which are detailed logs by correctional officers of daily contacts with inmates); Officer's Statements describing different types of incidents; and disciplinary records and other formal reports.

[7] We have reviewed the records and concluded that JPS has severed information correctly, in accordance with various provisions of the *Access to Information and Protection of Privacy Act, 2015*.

[8] JPS severed some information on the basis of section 40 (disclosure harmful to personal privacy). The severed information consists of the personal information, including names, contact information, and medical or other information of individuals other than the Complainant. Upon review we conclude that all of that information is properly withheld.

[9] JPS severed a small amount of information on the basis of section 41 (disclosure of House of Assembly service and statutory office records) consisting of one page which was withheld in its entirety. That page involves an inquiry by a statutory office. Under section 41(c) it is mandatory to withhold records connected with the investigatory functions of a statutory office. The one page falls into this category, and therefore JPS has properly withheld it.

[10] JPS used various provisions of section 31 (disclosure harmful to law enforcement) to redact the other withheld information. The relevant provisions are as follows:

31 (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to

*...
(c) reveal investigative techniques and procedures currently used, or likely to be used, in law enforcement;*

*...
(e) reveal law enforcement intelligence information;*

(f) endanger the life or physical safety of a law enforcement officer or another person;

[11] While we cannot further describe much of the withheld information, we have concluded that it was reasonably and appropriately withheld by the Department.

[12] For example, it is common practice for the Department to withhold the names of correctional officers under section 31(1)(f) in cases involving physical contact with inmates, especially the use of force, on the ground that there is a risk that disclosing the names could endanger the safety of the officer involved. The Department has done this in a number of such instances, but has not withheld the names of correctional officers in other circumstances. We conclude that these redactions are justified (see Report A-2021-006 at paragraph 17).

[13] Some internal HMP reports may contain assessments that involve scoring in order to make decisions involving the inmate. It would be inappropriate to disclose to inmates or to the public how the scoring is done. JPS withheld one such report in its entirety under section 31(2)(c) and we conclude that this redaction is appropriate (see Report A-2021-006 at paragraph 18).

[14] Some internal reports may include information from confidential informants, and disclosure of that information could endanger the physical safety of those individuals. JPS withheld one such report in its entirety under section 31(1)(e). We are satisfied that this redaction was appropriate.

[15] Section 31 is a discretionary exception, and therefore the public body must show that it has consciously considered whether or not to disclose that information. The Department has stated that a number of factors went into its exercise of discretion. For example, it is impossible to control how information, once disclosed, may be further disclosed, or to whom. In addition, the Department submitted that the exercise of discretion must take into account the incarceration history of the applicant. We accept that these are appropriate considerations, and find that the Department has exercised its discretion under section 31 reasonably.

[16] For the above reasons we conclude that the Department has provided the Complainant with all of the information to which he is entitled in response to his request.

RECOMMENDATIONS

- [17] Under the authority of section 47 of the *Access to Information and Protection of Privacy Act, 2015*, I recommend that the Department of Justice and Public Safety continue to withhold the redacted information.
- [18] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Justice and Public Safety 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.
- [19] Dated at St. John's, in the Province of Newfoundland and Labrador, this 9th day of September, 2022.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador