



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2022-029

December 2, 2022

Serious Incident Response Team

Summary:

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* to the Serious Incident Response Team for records relating to investigations into allegations against the Complainant. The public body provided the Complainant with the responsive records with some information withheld under section 40 (disclosure harmful to personal privacy). The Complainant did not agree with the decision to withhold information and filed a complaint with this Office. The public body released some additional information over the course of the investigation, and the Commissioner reviewed the remaining withheld information and found that it was appropriate for the public body to continue to withhold it in accordance with section 40.

Statutes Cited:

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

BACKGROUND

- [1] The Complainant made an access to information request to the Serious Incident Response Team (“SIRT”) under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) for various records relating to investigations conducted by SIRT into allegations made against the Complainant, including the names and statements of those who had made the allegations.
- [2] SIRT responded to the request by providing the complainant with 39 separate records of varying length, with redactions applied on the basis on sections 30 and 40 of *ATIPPA, 2015*.
- [3] The Complainant was not satisfied with the response and made a complaint to this Office asking for a review of the claimed exceptions to access. Over the course of the investigation, on the recommendation of this Office, SIRT agreed to release some of the previously withheld information and confirmed that it was no longer relying on section 30 to withhold information.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY’S POSITION

- [5] SIRT’s position is that it provided the Complainant with all responsive records and that the remaining redactions are required pursuant to section 40 of *ATIPPA, 2015*.

COMPLAINANT’S POSITION

- [6] The Complainant argued that the names and statements of the individuals who made the complaints to SIRT should be released based on section 40(5) of *ATIPPA, 2015*. In particular, the Complainant referenced sections 40(5)(a), (c), (f), (g) and (h) to support the release of the redacted information.

DECISION

[7] Section 40 is a mandatory exception to access for personal information. In this matter, the Complainant is specifically seeking the names of any individuals who made allegations against them to SIRT. The third parties' names are clearly their personal information; therefore, the analysis must continue to determine if the release of the information would constitute an "unreasonable invasion" of the third party's privacy.

[8] Section 40(4)(b) states that it is an unreasonable invasion of a person's privacy to release personal information which is an identifiable part of a law enforcement record. Additionally, the records not only contain the names of third parties, but other personal information as well, such as employment history. Therefore, releasing the information would be an unreasonable invasion of the individual's privacy. However, the Complainant argues that section 40(5) should override the presumption against disclosing this personal information.

[9] Section 40(5) requires the consideration of all relevant circumstances when determining if the release of personal information would constitute an unreasonable invasion of privacy, acting as an override of the protections contained in section 40(4). The potentially relevant sections of 40(5) for this matter include:

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;*
- (c) the personal information is relevant to a fair determination of the applicant's rights;*
- (f) the personal information has been supplied in confidence;*
- (g) the personal information is likely to be inaccurate or unreliable;*
- (h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;*

However, it must be noted that the list of considerations at section 40(5) is not exhaustive.

[10] With respect to 40(5)(a), the release of the names of the individuals who made the allegations to SIRT would not assist in subjecting the activities of the province of the public body to public scrutiny. The allegations were not made by a public body or about a public body and there is no evidence that SIRT improperly handled those allegations. Therefore, this factor would weigh in favour of continuing to withhold this personal information.

[11] Similarly, regarding section 40(5)(c), SIRT has already determined that the allegations are insufficient to support any criminal charges being laid. As such, the Complainant's rights have already been determined. Any further legal action would be civil in nature, likely initiated by the Complainant, and the Complainant would be able to avail of the relevant disclosure procedures in those proceedings. This factor would also weigh in favour of continuing to withhold this personal information.

[12] The information was provided in confidence as noted on several occasions throughout the records and, as such, section 40(5)(f) would weigh in favour of continued withholding.

[13] The Complainant argued that the information provided by the individuals to SIRT was inaccurate. SIRT has already evaluated the allegations and found them insufficient to ground any further action. As such, the release of allegedly inaccurate or unreliable information would not weigh in favour of release as per section 40(5)(g).

[14] Finally, given that there is potentially an acrimonious relationship between the individuals involved, there is a possibility that the release of the information could have a negative effect on the reputations of all those involved. Even if there were no impacts on reputations through disclosure, this factor also doesn't weigh in favour of release. Therefore, section 40(5)(h) would not support release of the information

[15] As noted above, the list of considerations at section 40(5) is non-exhaustive. However, no other considerations were put forward by the parties, and none are apparent based on a review of the records. Having completed an analysis of the relevant circumstances as set out

in section 40(5), we conclude that the balance of factors does not support overriding the presumption that the release of the personal information would constitute an unreasonable invasion of personal privacy.

RECOMMENDATIONS

[16] Under the authority of section 47 of the *Access to Information and Protection of Privacy Act, 2015* I recommend that the Serious Incident Response Team continue to withhold the remaining redacted information.

[17] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Serious Incident Response Team 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.

[18] Dated at St. John's, in the Province of Newfoundland and Labrador, this 2nd day of December 2022.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador