



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

Report A-2023-015

March 28, 2023

Town of Flatrock

Summary:

The Complainant made an access to information request to the Town of Flatrock for records containing advice from the Town Planner to the Town about the Complainant's property. The Town provided responsive records, but withheld some information pursuant to section 29 (policy advice and recommendations) and section 30 (legal advice). The Complainant requested this Office review the Town's decision to withhold this information. During the informal resolution process, the Town released an additional six pages of records to the Complainant that it had previously withheld under section 30. The Commissioner found that the Town had appropriately withheld the remaining records.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#),
SNL 2015, c. A-1.2, sections 29, and 30.

BACKGROUND

- [1] The Complainant made an access to information request to the Town of Flatrock (the “Town”) pursuant to the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”) for information about the Complainant’s property, including all planning advice and information provided by the Town’s planner to Council about the property.
- [2] In its response to the access request, the Town provided 43 pages of records to the Complainant. Of these records, eight pages were redacted in their entirety pursuant to section 30(1)(a) (legal advice) and a further two pages were partially redacted pursuant to section 29(1)(a) (policy advice and recommendations).
- [3] The Complainant was not satisfied with the response from the Town and requested that this Office review these redactions.
- [4] During the course of our investigation, after a discussion with the Office, the Town acknowledged that several pages of records withheld pursuant to section 30(1)(a) did not qualify for that exception to access as they did not contain information subject to solicitor-client privilege. The Town subsequently released six of the previously withheld pages to the Complainant. The Town continued to withhold the remaining two pages redacted pursuant to section 30(1)(a) as well as that information withheld pursuant to section 29.
- [5] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY’S POSITION

- [6] The Town submits that the information withheld pursuant to section 29(1)(a) are specifically recommendations and advice to the Town by the Town Planner regarding the property.

- [7] With respect to the two remaining pages withheld pursuant to section 30(1)(a), the Town submits that it has been advised by its solicitor that they are subject to solicitor-client privilege.

COMPLAINANT'S POSITION

- [8] The Complainant maintains their position that the remaining information should not be withheld by the Town.

DECISION

Section 29

- [9] The Complainant's request specifically sought "all planning advice and/or information received by the Town Council of Flatrock from the Town's Planner" in relation to a specific property. The only information withheld was the final two paragraphs in a report from the Town's planner containing recommendations for the Town and its Council.

- [10] Per section 29, information which is policy advice or recommendations developed by or for a public body may be withheld from an applicant:

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

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;

- [11] Therefore, information redacted pursuant to section 29 was appropriately withheld.

Section 30

- [12] In response to our investigation, the Town provided this Office with unredacted copies of the records it had withheld from the Complainant pursuant to section 30(1)(a). Section 30 states:

30. (1) The head of a public body may refuse to disclose to an applicant information

(a) that is subject to solicitor and client privilege or litigation privilege of a public body;

[13] As a result of being able to review these records, this Office was able to conclude that two of the eight pages did contain information subject to solicitor-client privilege and had been appropriately redacted by the Town. Our review of the remaining six pages concluded that they did not contain solicitor-client privileged information and that the exception to access of section 30 did not apply.

[14] The latter records consisted of an email from the Town to its solicitor seeking legal advice and an email from the solicitor in response with their advice. Solicitor-client privilege applies to this information and the Town has appropriately applied section 30.

[15] The other records withheld were a letter to the Eastern Newfoundland Regional Appeal Board regarding an appeal relating to the property and submissions to the same board relating to the appeal. The letter and submissions make up six pages.

[16] Although the records were written by the Town's solicitor on the Town's behalf, they were sent to a third party as part of an appeal, and did not consist of advice or other confidential communications between a solicitor and its public body client. As such, these records do not contain solicitor-client privileged information and section 30 does not apply. The Town has already accepted our conclusion with respect to this record and has provided a copy to the Complainant.

RECOMMENDATIONS

[17] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Town of Flatrock continue to withhold the information redacted pursuant to sections 29 (Town Planner's advice) and 30 (two pages of emails seeking and receiving legal advice).

[18] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Town of Flatrock 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 28th day of March 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador