



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-016

March 31, 2023

Town of Pouch Cove

Summary:

The Complainant sought records from the Town of Pouch Cove relating to a fire at the Complainant's home. The Town provided the Complainant with records that included an Incident Report and pictures from the fire. The Town redacted the names of the firefighters on the Incident Report and similarly withheld the faces of the firefighters in the pictures. The Town cited section 40(1) of *ATIPPA, 2015* as justification for these redactions. The Complainant argued that the redactions in both documents were improper and that the Town had not met its duty to assist, pursuant to section 13(1) and that it conducted an insufficient search for records. The Commissioner determined that the Town had not met its duty to assist and recommended a new search. The Commissioner also determined that the faces in the pictures should remain redacted but that the Town should release the names of the firefighters on the Incident Report.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2 sections 13 and 40.

Authorities Relied On:

Reports [A-2021-014](#) and [A-2023-009](#).

BACKGROUND

- [1] The Complainant made an access to information request pursuant to the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”) to the Town of Pouch Cove (the “Town”), seeking copies of all information, including documents, pictures, reports, and videos pertaining to a house fire at the Complainant’s home.
- [2] The Town released 17 pictures of the fire, the damage it caused, and the actions of the firefighters at the Complainant’s home. The fire chief for the Pouch Cove Volunteer Fire Department took those pictures. In the pictures, the Town redacted the faces of the firefighters pursuant to section 40(1) of *ATIPPA, 2015*. The Town also provided the Complainant a report from the Town to the provincial Fire and Emergency Services Branch, a part of the Department of Justice and Public Safety. Lastly, the Town provided the Complainant with a copy of an “Incident Report” from the Pouch Cove Volunteer Fire Department where the names of the members responding to the fire are redacted. The Town asserts that this redaction is also pursuant to section 40(1).
- [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 Town of Pouch Cove sought the advice of legal counsel in dealing with this complaint. The Town has recently experienced a change in leadership at the administrative level and the new Chief Administrative Officer is new to the ATIPP process. When this Office contacted the Town regarding the complaint, the Town submitted that the redactions were done under the advice of legal counsel. No further reasoning was provided.

COMPLAINANT’S POSITION

- [5] The Complainant asserts that all the information currently redacted should be disclosed since everyone whose name or face is redacted is doing work on behalf of the Town. The

Complainant also asserts that a proper search for documents has not been conducted by the Town and they believe that certain information is missing. Therefore, the Town has not met its duty to assist under section 13(1).

ISSUES

- [6] There are 3 issues to be addressed:
- i) Did the Town meets its duty to assist the complainant pursuant to section 13(1) of *ATIPPA, 2015*?
 - ii) Is blacking out the faces of the firefighters justified under section 40(1) of the Act?
 - iii) Is redacting the names of the firefighters in the Incident Report justified under section 40(1) of the Act?

DECISION

- [7] Relevant sections of *ATIPPA, 2015*:

13(1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

...

40(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

40(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where

- (f) The information is about a third party's position, functions, or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;*

40(5) In determining under subsection (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 right.*

[8] The duty to assist at section 13 imposes on a public body a duty to conduct a reasonable search for responsive records. However, it is difficult to judge the quality of the search undertaken by the Town in this case. As stated above, the Chief Administrative Officer of the Town is relatively new at the position and has little experience in access to information matters. We are further concerned that the Town Council has not made compliance with *ATIPPA, 2015* a priority (see, for example, our previous Report A-2023-009). We are also concerned that the acrimonious relationship between the Town and the Complainant may have contributed to the dispute about this request.

[9] These facts have affected the quality of the search firstly because the Complainant does not believe the Town took their request seriously; and secondly because this Office has been provided with no information on how the search was conducted. This Office does not know what terms were used to conduct the search, who conducted the search, when was it conducted, and what sources were searched. As noted in Report A-2022-30, to prove that the public body has met the reasonableness standard for a search, it is important that the public body provide information to this Office on what steps it took in conducting its search. The Town has not done that in this case and it is difficult for this Office to assess whether it met its duty under section 13(1).

[10] This Office's Practice Bulletin on reasonable search states that: "complainants must establish the existence of a reasonable suspicion that a public body is withholding a record, or has not undertaken an adequate search for a record." The bulletin later states: "the Complainant is expected to provide something more than a mere assertion that a document exists." In this case, the Complainant has only provided a mere assertion about documents that the Town has not disclosed. We cannot assess the Town's search against this assertion.

[11] With that said, a reasonable search has to be judged within its own unique set of circumstances. Would a search regarding a town's water and sewer system be reasonable if it did not involve the recreation director? Yes. However, a search regarding a town-run summer camp would not be reasonable if the recreation director was not part of it. Therefore, different searches require the public body to search different places and to involve different people. Therefore, would a reasonable search for pictures of the fire at the Complainant's home require some sort of consultation with the firefighters themselves? I conclude, yes. Even though the firefighters may be volunteers, any records they create in the course of their duties would necessarily be records of the Town.

[12] According to the Town, all the pictures of the fire at the Complainant's home were taken by the fire chief. The Town did speak to another firefighter about whether he took pictures and he said that he did not. Still, there are other firefighters who responded to the fire and they have not been asked. From a practical standpoint, it is most likely that only the Town's volunteer firefighters had the ability to take pictures of the fire from locations other than the front of the house. A house fire is a traumatic and invasive experience, involving strangers entering one's home and roaming about without impediment. At the very least, a person who suffered a house fire should be reassured that no pictures of the inside of their home are stored on the personal phone of a firefighter.

[13] As a result, I think that a reasonable search for pictures of the fire would require that the Town ask all firefighters whether they took any pictures of the fire and, if they did, to submit them to the Town and to delete them from their devices. I also recommend that the Town should properly document the efforts it has taken to identify records responsive to the Complainant's application. I further recommend that the Pouch Cove municipal staff, council, and volunteer fire department complete access and privacy training.

[14] With respect to the pictures of the firefighters with their faces redacted, section 40(2)(f) allows for the disclosure of a third party's position, functions or remuneration as an officer, employee, or member of a public body. Unless required by statute, such as requiring a town council meeting to be open to the public, I do not take section 40(2)(f) to mean that the public has a right to visual proof of how a representative of a public body is conducting their work.

[15] The Complainant argues that the firefighters have already consented to having their picture taken on the job since each firefighter has their picture available on the Town's website. However, consenting to have a picture on a website is much different than disclosing information of individual firefighters out performing their jobs. The website picture is staged and taken with the full knowledge of what it will be used for. Pictures taken while fighting a fire show expressions and actions of a dangerous situation. Those expressions and actions do not in any way address the function or role of a firefighter.

[16] This Office addressed the issue of disclosing pictures of the faces of employees while working for a public body in Report A-2021-014. In that case, the complainant was seeking video footage of various members of the Sheriff's Office. In making the decision to recommend that the faces of the sheriff officers remain blurred, this Office endorsed the position taken in F15-42 from the British Columbia Office of the Information and Privacy Commissioner, which stated:

[35] I agree with Alberta Order F2008-020 that video footage about a topic will frequently contain more detailed personal information than written information because it captures information in the form of images and audio recordings (including tone, physical identity, non-verbal body language and cues, mannerisms, etc.). In the context of ss. 22(4)(e) and 22(3)(d) of FIPPA, the distinction between video and audio recordings compared to written records may be relevant. In my view, audio and video footage about an employee is more likely to be "about" that specific employee, their actions and how they do their job compared to a written record created in the course of an employee's ordinary functions, tasks and activities. This is due in large part to the additional amount of detail that is contained in video footage compared to written records. I find that this is the case here, and that the video footage is about the specific employees, not their ordinary job functions, tasks and activities.

[17] In the pictures at issue, all of the firefighters are dressed the same and, except for their faces, they are indistinguishable. Showing the faces of the firefighters goes beyond the scope of section 40(2)(f). Disclosing the faces of the firefighters does far more than expose their individual function and position, it allows for scrutiny on an individual basis over how they conduct their work. Unlike other aspects of public safety, there is no clear policy reason why such scrutiny is needed for the Pouch Cove Volunteer Fire Department.

[18] For a full consideration on whether the disclosure of personal information constitutes an unreasonable invasion of a third person's privacy, the circumstances set out in section 40(5) must be weighed against the information in question. There are a variety of circumstances in that section, though only two could reasonably be considered to apply in this case. The first is section 40(5)(a), which addresses disclosure for the purpose of subjecting the activities of the province or a public body to scrutiny. Disclosing the faces of the firefighters in this case does nothing to further public scrutiny of the Pouch Cove Volunteer Fire Department, nor is there any known need to place that Fire Department under more scrutiny. The Fire Department is not accused of mishandling the fire and disclosing the faces of firefighters does not provide any more detail as to whether one of them took a picture that was not disclosed. If anything, the disclosure of the faces of the firefighters could undermine the capacity of the Fire Department, which is made up entirely of volunteers. These volunteers may not be so eager to sign-up for the role if they knew pictures of them doing their jobs would have to be disclosed without redaction.

[19] The other circumstance that should be considered is section 40(5)(c), which would allow disclosure of personal information if it was relevant to a fair determination of the applicant's rights. In this case, the Complainant's concern is not about who is who in each picture, rather it is knowing who responded to the call and who may have taken pictures of their home. There is no picture showing a firefighter taking a picture of inside the home. The issues raised by the Complainant can be fairly determined without disclosing the faces of the firefighters in the picture.

[20] The final matter for this Report to address, therefore, is whether the Town should release the names of the firefighters listed on the Town of Pouch Cove Incident Report. Names are certainly personal information. However, despite not applying to the images, section 40(2)(f) is applicable to the names in the Report. The firefighters listed in the incident report were acting as agents of the municipality and one of the functions of a firefighter is to respond to fires. Therefore, disclosing the names of firefighters present at the fire is not an unreasonable invasion of privacy.

RECOMMENDATIONS

[21] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Town of Pouch Cove:

1. Maintain the redaction of the faces of the firefighters who responded to the fire;
2. Provide a copy of the Pouch Cove Volunteer Fire Department Incident Report to the Complainant without redactions;
3. Conduct a new search, pursuant to section 13(1) of *ATIPPA, 2015*, for documents responsive to the Complainant's request and that this new search include firefighters who responded to the fire at the Complainant's home;
4. Arrange and complete ATIPP training with the ATIPP Office for the Town's Chief Administrative Officer, the Town Council, and for members of the Town's volunteer fire department.

[22] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Town of Pouch Cove 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.

[23] Dated at St. John's, in the Province of Newfoundland and Labrador, this 31st day of March 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador