



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**A-2023-040**

**September 27, 2023**

**City of St. John's**

**Summary:**

The Complainant made an access to information request to the City of St. John's under the *Access to Information and Protection of Privacy Act, 2015*, seeking access to records relating to a human resources complaint. The City disclosed 125 pages of records to the Complainant but redacted information citing sections 29 (policy advice or recommendations), 38 (disclosure harmful to labour relations interests of public body as employer) and 40 (disclosure harmful to personal privacy) of *ATIPPA 2015*. The Complainant submitted a complaint to this Office, arguing that the information should be disclosed under section 33 (information from a workplace investigation). We found that section 33 did not apply, the exceptions had been properly applied, and the City could continue to withhold the information.

**Statutes Cited:**

[\*Access to Information and Protection of Privacy Act, 2015\*](#), SNL 2015, c. A-1.2, sections 29, 33, 38 and 40.

## BACKGROUND

- [1] The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) to the City of St. John’s (the “City”) for the following records:

*Please provide all documentation regarding Human Resources investigation as noted above. I was one of three complainants that initiated this investigation through the union. I am requesting all documentation, emails, recording and any other relevant information.*

- [2] During an investigation in relation to a similar access request, it was determined that the investigation did not constitute a workplace investigation as defined by section 33 of the Act. As such, the request was amended with the consent of the Complainant to the following:

*Please provide all documentation regarding Human Resources investigation/assessment into the manager's conduct in Inspection Services. I was one of three complainants that initiated this investigation/assessment through the union. I am requesting all documentation, emails, recordings and any other relevant information.*

- [3] The City provided the Complainant with 125 pages of records with redactions made under sections 29, 38 and 40. The Complainant was not satisfied with this response and filed a complaint with this Office.

- [4] During the course of the investigation, the City did agree to remove some redactions made under section 29 and provided the updated records to the Complainant.

- [5] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*. The Information and Privacy Commissioner, Michael Harvey, delegated authority for this matter to me, as Director of Research and Quality Assurance, pursuant to section 103 of *ATIPPA, 2015*.

## COMPLAINANT'S POSITION

- [6] The Complainant asserts that the process should be considered a workplace investigation under section 33 of the Act. They argue that their intention in making the original complaint was to trigger a workplace investigation, and the decision by the City to characterize the process as a workplace assessment was made to deny access to the records.
- [7] Additionally, the Complainant argues that they should be provided with a copy of the notes taken during their own interview, as this would constitute their own personal information.

## PUBLIC BODY'S POSITION

- [8] The City argued that section 33 of *ATIPPA, 2015* does not apply, as the actions taken did not fit the requirements for a workplace investigation as set out by the Act. It was noted that the process was designed to assess the department as a whole and to find solutions to the issues identified. The original complaints may have identified individual employees who were alleged to have contributed to the difficult work environment, however the process did not focus on any one individual and did not contemplate any discipline for individual employees. As such, the City submitted that despite the Complainant being a party to the assessment, they were not entitled to all of the records they would be if the requirements for section 33 were met.
- [9] Based on its position that section 33 did not apply, the City applied redactions to the records prior to providing them to the Complainant. It applied redactions under sections 29, 38, and 40. Redactions under sections 29 and 38 were made in relation to the planning stage of the assessment and discussions in relation to the results of the interviews and options going forward. Sections 38 and 40 were applied to the notes taken during employee interviews; each interview was attended by a Union representative, a City representative, and the employee. Additionally, the summary of the interviews was also redacted under sections 38 and 40. The City claims that these redactions were necessary, appropriate, and in accordance with the Act.

## ISSUES

- [10] Does the process followed by the City constitute a workplace investigation as defined by section 33 of *ATIPPA, 2015*?
- [11] If section 33 does not apply, are the redactions made under sections 29, 38 and 40 appropriate?

## DECISION

- [12] Due to complaints about a toxic work environment, the City, in collaboration with the Union, conducted an assessment of the department. This involved interviews with various employees. Each interview was attended by a Union representative, a City representative, and the employee being interviewed. The interviews were recorded in such a way as to protect the identity of those being interviewed. Once the interviews were completed, the City compiled a summary and created a slide show of the main findings and recommendations to be shared with employees of the department.
- [13] The Complainant alleges that as a party to the investigation they are entitled to receive all relevant records under section 33 of the *Act*. In order for section 33 to apply there must first be a determination of if there was in fact a “workplace investigation”. The requirements for a workplace investigation are set out in section 33(1)(c) which states:

(c) *"workplace investigation" means an investigation related to*

- (i) *the conduct of an employee in the workplace,*
- (ii) *harassment, or*
- (iii) *events related to the interaction of an employee in the public body's workplace with another employee or a member of the public*

*which may give rise to progressive discipline or corrective action by the public body employer.*

- [14] The City characterized the process as a workplace assessment and not a workplace investigation. While it seems that there may have been a limited number of individuals whose alleged actions were the source of the issues that lead to the assessment, the process was

designed to address issues in the department as a whole and provide guidance on improving the workplace in general.

[15] As this was not an investigation into the actions of one individual, rather an assessment of the issues facing the division as a whole, and there was no discipline or corrective action contemplated, section 33 does not apply in this situation.

[16] Given that section 33 does not apply to the records, the redactions made must be assessed with respect to sections 29, 38, and 40. Some planning emails and the unofficial summary of the results of the assessment interviews were redacted as per sections 29(1)(a) and 38(1). The actual notes taken during the interviews were redacted as per sections 38(1) and 40.

[17] The redactions made under section 29(1)(a) are all in relation to “*advice, proposals, recommendations, analyses or policy options*”, the majority of which relate to discussions on how the assessment should be done and analysis or interpretation of the results of the employee interviews. As such, they are appropriate.

[18] The City and Union were clear when conducting the interviews that the results would be kept confidential. Employees were assured prior to being interviewed that no names or identifiers would be assigned to the notes in an effort to protect the privacy of all involved. This is evidenced by the note on the top of each interview sheet stating that the “Meeting is Confidential”.

[19] While the notes were kept in such a way as to protect the privacy of those being interviewed, there is still a real risk that someone with knowledge of the department or the assessment would be able to look at the interview notes as a whole and identify one or more of the individuals involved. An assiduous inquirer may be able to piece together the identities based on clues in the interview notes and their own personal knowledge of the circumstances. Therefore, the interview notes from each interview are the personal information of the employees and release of the records would constitute an unreasonable invasion of their personal privacy under section 40(1) if released.

[20] Usually, in a similar circumstance, it would not be an unreasonable invasion of personal privacy to provide the Complainant with the notes taken during their own interview as per section 40(2)(a). The City specifically addressed this concern, stating:

*It is important to note, even when interview times or position titles are noted in the interview response records, those cannot be relied upon to identify an employee as there were multiple staff interviewed concurrently, along with cancellations and rescheduling. Position titles are an unreliable identifier as there are many staff within the division that hold the same title. This office also considered the mosaic effect when contemplating the release of the anonymous responses to the Applicant and has determined the anonymous responses cannot be released without a violation of the personal information of employees.*

[21] Additionally human resources staff turnover since the interviews were conducted further complicates any attempt to isolate the notes taken during the Complainant's interview. As noted above, the interviews still contain some information and possible clues as to the identity of the interviewed employee but despite attempts being made, it has not been possible to determine with any reasonable level of confidence, which records relate specifically to the Complainant. At best, a reasonable guess could be made, but the risk of mistakenly disclosing another employee's personal information to the Complainant – and therefore breaching another employee's personal privacy – is too high. As such, it is appropriate for the City to continue to withhold all of the interview notes under section 40.

[22] Given that all records redacted under section 38 are also redacted under section 40, and we have determined that section 40 has been properly applied, an analysis of the application of section 38 to the records is not necessary.

## RECOMMENDATIONS

[23] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the City of St. John's continue to withhold the records in question.

[24] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the City of St. John's must give written notice of his or her decision with respect to these recommendations to this Office and

any person who was sent a copy of this Report within 10 business days of receiving this Report.

[25] Dated at St. John's, in the Province of Newfoundland and Labrador, this 27<sup>th</sup> day of September 2023.



Sean Murray  
Commissioner's Delegate  
Office of the Information and Privacy Commissioner  
Newfoundland and Labrador