



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-043

November 1, 2023

Town of Grand Falls-Windsor

Summary:

In response to Report [A-2023-031](#), the Town of Grand Falls-Windsor provided the Complainant records as per the recommendations in the Report. Redactions were made to the new records pursuant to sections 37 and 40 of *ATIPPA, 2015*. The Complainant disagreed with all of the redactions and filed a complaint with this Office. After review of submissions and the responsive records, the Commissioner agreed that section 37 applied as claimed by the Town because there was sufficient evidence of harm if the redacted portions were released. The Commissioner also agreed with the redactions made pursuant to section 40 and recommended the Town maintain its position on most of the withheld records.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, Sections 37, 40 and 43.

Authorities Relied On:

OIPC Reports [A-2023-031](#) and [2007-001](#).

BACKGROUND

- [1] On March 7, 2023, the Complainant made a request under the Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015) to the Town of Grand Falls-Windsor (the Town) for the following:

Any and all records including emails, letters, and phone records regarding [the Complainant] dates August 2022 to present. Any complaints regarding [the Complainant] sent to [several named employees and elected officials of the Town]. Any and all records related to social media investigations including the entire red folder containing all the alleged evidence for this investigation

- [2] An initial complaint resulted in this Office issuing Report [A-2023-031](#) which recommended the Town, among other things, conduct a new search for responsive records. On August 2, 2023, the Town provided the Complainant with additional records but with information redacted under sections 37 and 40 of ATIPPA, 2015. The Complainant disagreed with these redactions and filed a new complaint as a result.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015.

ISSUES

- [4] The only issue to be addressed in this Report is whether the Town has met the burden of proving that sections 37 and 40 apply to the information withheld from the Complainant.

DECISION

- [5] The relevant sections of ATIPPA, 2015 read as follows:

37.(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, where the disclosure could reasonably be expected to

(a) threaten the safety or mental or physical health of a person other than the applicant

...

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.

...

43. (1) On an investigation of a complaint from a decision to refuse access to a record or part of a record, the burden is on the head of a public body to prove that the applicant has no right of access to the record or part of the record.

[6] As noted above, the burden is on the Town to show that the Complainant has no right to the redacted records. In our analysis, there is evidence of harm as required by section 37 to justify most of the claimed exclusions. The section 40 redactions were also appropriate, despite inconsistencies in its application, which we discuss below.

[7] In [Report 2007-001](#), the applicant had applied to a municipality under a previous version of ATIPPA for access to copies of written complaints against him from employees of the municipality, including one from an alleged complainant whom he identified by name. The Town denied access to the complaints, citing section 26, a similar provision to the existing section 37. In that case, there was no evidence of potential physical harm but the Town argued the release could affect the mental health of the witnesses. The Commissioner at the time agreed with the public body's decision to withhold two of four complaints, but recommended release of the other two, less redactions for personal information. In our analysis, there is actual evidence in the present matter that the mental health of individuals could be threatened if the redacted information is released.

[8] Within the responsive records are several emails between the Town and third parties where third parties express their concerns about the Complainant's conduct and voice concerns for their own safety. Many of these emails contain social media posts from Twitter collected and shared with the Town by third parties. Many of these social media posts contain threats of violence and resulted in Twitter suspending the Complainant's account. All information in the responsive Tweets which reveal the identity of the third parties, such as profile pictures and Twitter usernames, were redacted under section 37. In my view, based on the threatening and harassing language from the Complainant, there is justification to redact the information under section 37. However, given that what has been redacted is

personal information of third parties, section 40 would also be appropriate to support the redactions.

[9] Having reviewed the tweets and emails in the responsive records demonstrating the Complainant's behavior, I am satisfied that there is sufficient evidence establishing a reasonable expectation of probable harm in accordance with section 37, if the redacted identities and statements of the complainants are released.

[10] I am satisfied that section 37 was appropriately used in most cases. Section 40 was also generally used appropriately. Section 40 could have also been used in place of section 37 in some instances, as referenced above, however as either section could apply this does not change my conclusion.

[11] Included in the responsive records in "Email 12" is a "cease and desist" letter to the Complainant from a solicitor, demanding the Complainant stop spreading defamatory and false material regarding the solicitor's client. The Town withheld the letter under section 37. The Complainant, being the recipient, received the letter and posted it to Twitter and there would be no harm if released again to the Complainant. Therefore, as it relates to the cease and desist letter, the section 37 exception fails. The record labelled "Email 13" contains other redactions to protect the identity of third parties per section 40 and these are appropriate.

RECOMMENDATIONS

[12] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Town disclose the letter as referenced in paragraph 11 of this Report but otherwise maintain its position on the matter.

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

[14] Dated at St. John's, in the Province of Newfoundland and Labrador, this 1st day of November, 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador