



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2015-011

December 14, 2015

Department of Municipal and Intergovernmental Affairs

Summary:

The Applicant requested from the Department of Municipal and Intergovernmental Affairs information relating to an ongoing issue between her and the Department. The Department granted the request but severed some information based on sections 29 (policy advice and recommendations), 30 (legal advice) and 40 (disclosure harmful to personal privacy). Following the Applicant's complaint, the Department found and disclosed additional records, and agreed to disclose some of the information it had previously withheld. The Commissioner found that the Department had conducted a reasonable search for records responsive to the request, and that the Department was entitled to continue to withhold the remaining severed information.

Statutes Cited:

Access to Information and Protection of Privacy Act, 2015, SNL 2015, c. A-1.2, ss. 9, 29, 30 and 40.

Authorities Relied On:

Newfoundland and Labrador OIPC Reports A-2011-009, A-2012-006, A-2013-004, A-2014-001, A-2014-006, A-2014-010, AA-2014-014, A-2015-007.

I BACKGROUND

- [1] Under the provisions of the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or “the *Act*”) the Applicant submitted a request to the Department of Municipal and Intergovernmental Affairs (the “Department”) for “...all correspondence, internal memoranda, notes, reports and other documents...” relating to an ongoing issue between the Applicant and the Department concerning her occupation of a plot of Crown land in western Newfoundland. In response the Department provided the Applicant with a large number of records, mainly consisting of internal e-mails and other internal documents. Some information in the records was withheld on the ground that it was not responsive to the request. The Department also severed some other information relying on the exceptions in section 29 of the *Act* (policy advice or recommendations), in section 30 (legal advice) and section 40 (disclosure harmful to personal privacy).
- [2] The Applicant was not satisfied with the Department’s response, and filed a complaint with this Office. During the informal resolution process, the Department agreed to disclose a great deal of the information it had previously withheld as non-responsive. It also agreed to disclose some of the information previously withheld under sections 29 and 40. Ultimately, however, the complaint could not be resolved informally, and so the Applicant and the Department were notified that the file had been referred to formal investigation in accordance with subsection 44(4) of the *Act*. Both the Department and the Applicant provided written submissions in support of their positions, which will be referred to below.

II DECISION

- [3] The first unresolved issue is the adequacy of the search for responsive records carried out by the Department in response to the access request. Section 13 of the *ATIPPA, 2015* states that a public body “...shall make every reasonable effort to assist an applicant in making a request....” This Office has always interpreted that provision to include the responsibility to conduct a reasonable search for the requested records, and a reasonable search has been described as one conducted by knowledgeable staff, in locations where the records in question might reasonably be located.

[4] The Applicant argued that, given the numerous telephone calls and meetings involved with her issues, there must be more notes about these subjects kept by the government employees involved, and that those notes are missing from the responsive record.

[5] In response to the concerns expressed in the Applicant's complaint, the Department's Access and Privacy Coordinator went back over the original search, and did discover that a few employees had misunderstood the scope of the request for responsive records. As a result, an additional 14 pages of handwritten notes, mainly diary entries, were added to the responsive record, and have been provided to the Applicant subject to the severing of some personal information of other individuals. Beyond that, I would observe that the government of Newfoundland and Labrador has not yet created a legislative duty to document the deliberations and decisions of public bodies. Many government departments and other public bodies, however, including the Department of Municipal and Intergovernmental Affairs, would appear to have reasonably strong information management practices. While documentation of ongoing activities is not always as detailed as some people, particularly access to information applicants, might wish, I am satisfied in the present case that a reasonably diligent search was conducted by knowledgeable staff, and that the Applicant has been provided with all of the responsive records that exist.

[6] The remaining issues involve the severing of some of the information based on various exceptions to access. The Department has continued to withhold some information severed on the basis of section 29 of the *Act* (policy advice or recommendations), for example, the last section of a briefing note that explicitly recommends a certain course of action. I agree with those decisions. The intent of this exception is to allow public servants to candidly address issues, give advice, and discuss proposals or alternative courses of action without having such discussions exposed to public view. Following discussions with this Office and the Department's agreement to disclose some previously withheld information, I am satisfied that the remaining information clearly falls within the exception and may continue to be withheld.

[7] The Department has withheld some information on the basis of section 30 of the *Act* (legal advice). Having reviewed that material I have concluded that some of that information consists of a legal opinion, and clearly falls within the exception. The remainder is a summary of legal advice and falls into the category of information protected by paragraph 30(1)(b) – information that would

disclose legal opinions provided to a public body by a law officer of the Crown. In both cases I am satisfied that the information may be withheld.

[8] The Department also has continued to withhold a small amount of information on the basis of section 40 of the *Act* (disclosure harmful to personal privacy). I am satisfied that the information is the personal information of certain individuals and that it would be an unreasonable invasion of their personal privacy to disclose it.

[9] I should note here that in its submissions the Department discussed at some length the way in which it considered section 9, the public interest override. The Department is of the view that in the present case the public interest in disclosure does not outweigh the reasons for the application of the policy advice and recommendations or legal advice exceptions, and therefore consideration of section 9 does not change its decisions to withhold information that falls within those exceptions. Having reviewed the record and the issues being dealt with between the Applicant and the Department, I agree with the Department's position on the application of section 9.

[10] Although it was not possible to resolve this complaint to the satisfaction of the Applicant and was therefore necessary to proceed to a formal investigation, the above severing issues were in fact resolved between the Department and this Office prior to the writing of this Report. The Department has already made the necessary changes to the responsive record and has provided the record to the Applicant. As a consequence, I will make no recommendations for further disclosure to the Department.

III RECOMMENDATIONS

[11] Pursuant to section 47 of the *ATIPPA, 2015* I recommend that the Department of Municipal and Intergovernmental Affairs continue to withhold the information it has severed based on the exceptions in sections 29, 30 and 40 of the *ATIPPA, 2015* in accordance with the agreement reached between the Department and this Office on December 8, 2015, and grant the Applicant access to the rest of the responsive record.

[12] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the Department of Municipal and Intergovernmental Affairs 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.

[13] Dated at St. John's, in the Province of Newfoundland and Labrador, this 14th day of December, 2015.

E. P. Ring
Information and Privacy Commissioner
Newfoundland and Labrador

