



Report A-2017-019

August 3, 2017

Royal Newfoundland Constabulary

Summary:

The Royal Newfoundland Constabulary (“RNC”) received an access request seeking disclosure of specific information related to a motor vehicle accident. The RNC denied access to the records based on section 31(2)(b) (disclosure harmful to law enforcement) of the *ATIPPA, 2015*. The Applicant was not satisfied with the RNC’s response and filed a complaint with this Office. During the complaint process, the RNC further claimed that the *Highway Traffic Act* exempted the records from the application of the *ATIPPA, 2015*. The Commissioner determined that only the Vehicle Collision Report was excluded and that the RNC applied section 31(2)(b) too broadly in withholding the RNC records created in addition to the Vehicle Collision Report. The Commissioner recommended that the majority of the information in the RNC’s records be disclosed, with some exceptions.

Statutes Cited:

Access to Information and Protection of Privacy Act, 2015, S.N.L. 2015, c. A-1.2, sections 2(n), 7(1), 7(2), 17(1)(c)(i) and 31(2)(b); *Highway Traffic Act*, R.S.N.L. 1990, c. H-3, section 173.

Authorities Relied On:

OIPC NL [Report A-2013-007](#)

I BACKGROUND

- [1] Pursuant to the *Access to Information and Protection of Privacy Act, 2015* (the “*ATIPPA, 2015*”) the Royal Newfoundland Constabulary (“RNC”) received an access to information request seeking disclosure as follows:

All information related to the accident I was involved in on [specific date], where I was hit from behind while parked on the [specific location]. This would include at a minimum:

- 1. All information included in Police File [File #]*
- 2. All information gathered or provided to [named officer 1]*
- 3. All information gathered or provided to [named officer 2]*
- 4. All information gathered or provided to [named officer 3]*

- [2] The information the Applicant requested is contained in an RNC file, containing an “RNC Occurrence Report” (hereinafter the “RNC file”). The RNC refused access to the requested records based on section 31(2)(b) (disclosure harmful to law enforcement) of the *ATIPPA, 2015*. The RNC advised the Applicant that routine requests for information regarding accidents should be directed to the Driver Records Section at Motor Registration Division. The Applicant was not satisfied with the RNC’s response and filed a complaint with this Office.
- [3] As attempts to resolve the complaint by informal resolution were unsuccessful, the complaint was referred for formal investigation pursuant to section 44(4) of the *ATIPPA, 2015*.

II PUBLIC BODY’S POSITION

- [4] The RNC’s position is that the records should be withheld pursuant to section 31(2)(b) of the *ATIPPA, 2015*. The RNC also argued that it did not disclose its reason to the Applicant for relying on section 31(2)(b), as disclosing that reason could expose to civil liability a person who was quoted or paraphrased in the file.

[5] The RNC argued that information in the file could expose a person quoted in it to civil liability as described in section 31(2)(b) and that the information is therefore excepted from disclosure under the *ATIPPA, 2015*.

[6] In the alternative, the RNC, during the complaint process, added an argument pursuant to section 7 and Schedule A of the *ATIPPA, 2015*, that accident reports mandated by sections 169-172 of the *Highway Traffic Act* (the “HTA”) are exempt from the *ATIPPA, 2015*.

III APPLICANT’S POSITION

[7] The Applicant provided a detailed complaint raising numerous concerns with the RNC’s response. Included in the Applicant’s arguments was the position that section 31(2)(b) is designed only to protect police officers, witnesses, and informants, not actual parties to the event.

[8] The Applicant cited section 15(2) of the British Columbia *Freedom of Information and Protection of Privacy Act (FIPPA)* and the British Columbia *Freedom of Information and Protection of Privacy Act Policy & Procedure Manual* (“BC Manual”) regarding its interpretation of section 15(2)(b) of the BC *FIPPA*:

15(2) The head of a public body may refuse to disclose information to an applicant if the information

...

(b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record, or ...

BC Manual

Paragraph 15(2)(b) permits the head to refuse disclosure of information in a law enforcement record where disclosure could reasonably be expected to expose the author of the record or a person quoted or paraphrased to any type of civil liability.

This exception protects law enforcement officials who might be sued as a result of disclosure of records made while carrying out their duties. It would also protect private citizens who submit records for an investigation or

proceeding, or who are quoted or paraphrased in records related to an investigation or proceeding.

Expose to civil liability means to reveal information that could lead to court action for damages. For example, reports prepared during the initial stages of a criminal investigation often contain derogatory comments about a suspect. Most investigations begin with conjecture that may or may not be substantiated by the investigation. The subsequent release of such a report should not expose law enforcement personnel, witnesses or other sources to civil liability. This includes all types of civil liability.

Examples:

- *Opinions expressed about an individual under law enforcement investigation by a person who has had dealings with that individual.*
- *A statement by a police officer that he or she believes the complainant is making a false allegation.*

[9] The Applicant points out that as section 31(2)(b) of the *ATIPPA, 2015* is similar to its counterpart in BC's legislation, the preferred interpretation is that found in the BC manual referencing only law enforcement witnesses and other sources, not parties to the actual event. If section 31(2)(b) of the *ATIPPA, 2015* does apply to parties to a collision, the Applicant maintains that portions of the records should still be available after a line by line review and redaction to remove any portions that could give rise to civil liability.

IV DECISION

[10] Sections 7(1) and 7(2) of the *ATIPPA, 2015* state:

7. (1) Where there is a conflict between this Act or a regulation made under this Act and another Act or regulation enacted before or after the coming into force of this Act, this Act or the regulation made under it shall prevail.

(2) Notwithstanding subsection (1), where access to a record is prohibited or restricted by, or the right to access a record is provided in a provision designated in Schedule A, that provision shall prevail over this Act or a regulation made under it.

[11] As sections 173, 174 and 174.1 of the *HTA* are included in Schedule A of the *ATIPPA, 2015*, and they set out the right to access, they prevail over the *ATIPPA, 2015*. Section 173 of the *HTA* states:

173. A written report or statement made or provided under section 169, 170, 171 or 172

- (a) is not open to public inspection; and*
- (b) is not admissible in evidence for any purpose in a trial arising out of the accident except to prove*
 - (i) compliance with section 169, 170, 171 or 172, or*
 - (ii) falsity in a prosecution for making a false statement in the report or statement.*

[12] Sections 169 to 172 compel those involved in motor vehicle accidents to provide information to the police. Our legal system frowns upon using information that was not voluntarily provided to the police as evidence against the person that was forced to provide it. Failing to provide to the police with the requisite information is an offence, therefore completing an accident report is not voluntary.

[13] A sample of a blank report (Vehicle Collision Report) is attached to this Report and marked as Appendix A. The form of this report is prescribed by the Registrar of Motor Vehicles pursuant to section 171 of the *HTA*. Sections 173 to 174 of the *HTA* specify what information in a Vehicle Collision Report is accessible via a request to the Registrar of Motor Vehicles.

[14] Sometimes, due to the possibility that grounds to suspect that an offence has occurred are disclosed in the information provided in making Vehicle Collision Reports, police officers will obtain additional information, including from the parties to an accident. This additional information is voluntary as they are not required to do so by the *HTA*. Police officers may also obtain information from witnesses to an accident in pursuit of investigations as to whether an accident involved the commission of an offence. Other material gathered by the police in pursuit of an investigation of an offence constitute law enforcement records as set out in section 31 of the *ATIPPA, 2015*. Law enforcement records are subject to the *ATIPPA, 2015* and may be obtained via an access to information request, subject to any exemptions that apply to those records or portions of them.

[15] I note that a previous report (Report A-2013-007) concluded that Vehicle Collision Reports were outside the scope of the version of *ATIPPA* then in force. None of the amendments associated with the *ATIPPA, 2015* result in a different conclusion.

[16] While Vehicle Collision Reports are also a part of the law enforcement record, as they must be made to peace officers, they are not accessible via the *ATIPPA, 2015* as sections 173, 174 and 174.1 of the *HTA* prevail.

[17] The balance of the RNC file (its investigation as to whether an offence occurred) are law enforcement records subject to *ATIPPA, 2015* and can only be withheld if they are within exceptions to access.

[18] The RNC also relied on section 31(2)(b) of the *ATIPPA, 2015* to withhold the contents of the RNC file:

31(2) The head of a public body may refuse to disclose information to an applicant if the information

(b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record; or

[19] As noted above, I accept that the RNC file containing the results of its investigation as to whether an accident constituted an offence are law enforcement records: Section 2(n) of the *ATIPPA, 2015* defines “law enforcement” as:

(i) policing, including criminal intelligence operations, or

(ii) investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment;

[20] The RNC’s reason for applying section 31(2)(b) is due to what it believes is a reasonable expectation of exposure to liability for someone quoted in the records. As the RNC correctly pointed out, OIPC Report A-2013-007 held that, “[t]he Act does not require any findings of liability, rather all that is required is a reasonable expectation of exposure to liability.” Based

on my review of the records, I accept that there is material that could expose a person quoted to civil liability. That material as well as any officer's notes related to it may be withheld based on section 31(2)(b).

[21] Finally, the RNC did not provide a reason to the Applicant as required by section 17(1)(c)(i) of the *ATIPPA, 2015*:

17. (1) In a final response to a request for access to a record, the head of a public body shall inform the applicant in writing

(c) if access to the record or part of the record is refused,

(i) the reasons for the refusal and the provision of this Act on which the refusal is based...

[22] Section 17(1)(c)(i) of the *ATIPPA, 2015* specifically requires a public body, in its final response, to provide reasons. The RNC did not do this; it refused access to the requested records in accordance with section 31(2)(b) but did not provide a reason to the Applicant. The RNC claimed that revealing its reason would result in releasing information that could create an exposure to civil liability. The RNC's reason was provided to this Office and I find that disclosing the reason does not disclose the actual information on which it is based. Therefore the RNC failed to comply with the *ATIPPA, 2015* when it withheld its reason from the Applicant.

[23] Further, the RNC has stated that it did not do a line by line review to determine what information could be withheld pursuant to section 31(2)(b) of the *ATIPPA, 2015*. A complete line by line review of the RNC's law enforcement records was required to determine what information fit within the exception claimed. Any information not meeting the exception claimed should have been released, including the Applicant's own information. By not reviewing the RNC file to determine what information could possibly be released, the RNC erred.

[24] After reviewing the records, I find that the application of section 31(2)(b) of the *ATIPPA, 2015* by the RNC was too broad in this case. Only those portions of the RNC file that I have identified as falling within section 31(2)(b) may be withheld.

[25] The RNC does not have to review or disclose the Vehicle Collision Report. Contents of that document that may be disclosed pursuant to the *HTA* can be obtained from the Registrar of Motor Vehicles.

V RECOMMENDATIONS

[26] Under the authority of section 47 of the *ATIPPA, 2015* I recommend that the RNC provide the reason for its reliance on section 31(2)(b) of the *ATIPPA, 2015* to the Applicant and that it disclose its entire RNC file to the Applicant (with the exception of the highlighted information contained on pages 13-16 and 23-34 of a copy of the responsive record provided to the RNC along with this Report).

[27] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the RNC must give written notice of his or her decision with respect to this recommendation to the Commissioner and to any person who was sent a copy of this Report (in this case the Applicant) within 10 business days of receiving this Report.

[28] Please note that within 10 business days of receiving the decision of the RNC under section 49, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador Trial Division in accordance with section 54 of the *ATIPPA, 2015*.

[29] Dated at St. John's, in the Province of Newfoundland and Labrador, this 3rd day of August, 2017.

Donovan Molloy, Q.C.
Information and Privacy Commissioner
Newfoundland and Labrador