



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2017-025

November 16, 2017

Department of Municipal Affairs and Environment

Summary:

The Applicant submitted an access to information request to the Department of Municipal Affairs and Environment (the “Department”) for the identity of an individual who had made a complaint regarding councillors missing meetings. The Department provided the wording of the complaint but refused access to the name of the individual, a telephone number and the individual’s community pursuant to section 40 of the *ATIPPA, 2015*. The Commissioner determined that the Department’s application of section 40 was appropriate and recommended that the Department continue to withhold the information.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), S.N.L. 2015, c. A-1.2, section 40.

Authorities Relied On:

OIPC NL Report [A-2016-031](#); [A-2012-005](#).

I BACKGROUND

[1] Pursuant to the *Access to Information and Protection of Privacy Act, 2015* (the “*ATIPPA, 2015*” or the “*Act*”) the Department of Municipal Affairs and Environment (the “*Department*”) received an access to information request seeking disclosure of the name of an individual who made a complaint regarding councillors missing meetings.

[2] The Department disclosed the complaint, which does not name the Applicant, and only references councillors, in a generic sense, missing meetings and stating that the Mayor has done nothing about this issue. The Department withheld the name, telephone number and community of the complainant based on section 40(1) (disclosure harmful to personal privacy) of the *ATIPPA, 2015*. The Applicant was not satisfied with the Department’s response and filed a complaint with this Office.

[3] As it could not be resolved informally, the complaint proceeded to formal investigation pursuant to section 44(4) of the *ATIPPA, 2015*.

II PUBLIC BODY’S POSITION

[4] The Department’s position is that the information is exempt from disclosure pursuant to section 40(1) of the *ATIPPA, 2015*.

[5] The Department argues that disclosure of the information at issue would be an unreasonable invasion of the complainant’s personal privacy and that there could be a risk of harm to the complainant if their name was disclosed.

III APPLICANT’S POSITION

[6] The Applicant’s position is that the name of the individual who made the complaint should be disclosed as that person tarnished the Applicant’s name and affected them as

they are unable to run for council for two years. It is the Applicant's opinion that this was a "set up from inside the council" and that they have a right to know who made the complaint.

IV DECISION

[7] The name, telephone number and community of the complainant are personal information within the meaning of section 2(u) of the *ATIPPA, 2015 Act*.

[8] Reports A-2012-005 and A-2016-031 address similar issues, namely access requests for the name of an individual who had made a complaint. Based on the following factors:

- the information at issue meets the definition of personal information;
- section 40(2) does not apply; and,
- balancing the factors under section 40(5) does not mitigate in favour of disclosure,

I arrive at the same conclusion here; the Department appropriately withheld the individual's name, telephone number, and community.

V RECOMMENDATIONS

[9] Under the authority of section 47 of the *ATIPPA, 2015* I recommend that the Department continue to withhold the information originally redacted (the individual's name, telephone number and community) in the Department's response to the Applicant.

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

[11] Please note that within 10 business days of receiving the decision of the Department 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*.

[12] Dated at St. John's, in the Province of Newfoundland and Labrador, this 16th day of November, 2017.

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

