



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2018-002

January 18, 2018

Town of Portugal Cove-St. Phillip's

Summary:

The Complainant made a request to the Town of Portugal Cove-St. Phillip's (the "Town") relating to items discussed at a Council meeting on August 1, 2017. The Town responded, providing some information, but withholding records, relying on section 40 (disclosure harmful to personal privacy). The Commissioner concluded that disclosure of the redacted information would not be an "unreasonable invasion of a third party's personal privacy," and recommended disclosure.

Statutes Cited:

[Access to Information and Protection of Privacy Act](#), SNL 2015, c.A1.2, sections 32(a), 40(1), 40(2)(m), 40(3), and 40(5).

I BACKGROUND

- [1] In an August 1, 2017 meeting of the Council of the Town of Portugal Cove-St. Phillip's (the "Town"), discussion ensued regarding "resident consultations" conducted in relation to the Maggies Place Development. Published Minutes of the Meeting include:

Maggies Place Development update

The development of Maggies Place is an initiative of this Council and of great interest to the residents of PCSP where Maggies Place was selected for a new Depot and new affordable housing. The Town recently received an application from a developer for senior's cottages and single family dwellings. The Town is satisfied the public sector has recognized the exhaustive resident consultations that were undergone, and are still undergoing, met their needs.

- [2] The Complainant made a request to the Town under the *Access to Information and Protection of Privacy Act, 2015* ("the *ATIPPA, 2015*") seeking information regarding these resident consultations:

List of exhaustive resident consultations – including content, date, audience, etc. and list and copies of response to these "exhaustive resident consultations."

- [3] The Town responded to this request by providing access to some of the responsive records. However, the Town withheld the names, mailing information and much of the content (which consisted of meeting summaries) of the consultations 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.
- [4] As informal resolution was not possible, the complaint proceeded to formal investigation pursuant to section 44(4) of the *ATIPPA, 2015*.

II PUBLIC BODY'S POSITION

- [5] The Town takes the position that this information is personal information, because it is information about identifiable individuals, specifically their names, addresses, and the individual's personal views or opinions regarding the Maggies Place Development. It also maintains that this information, if disclosed, would be an unreasonable invasion of a third party's personal privacy.
- [6] The records involved include mailing lists used by the Town to send a template letter to landowners advising of consultations, the template letter, meeting schedule, meeting summaries/interviews from the landowner consultations, etc.
- [7] After discussions with the Town, it agreed to release the addresses of the land impacted and meeting schedule of the residents invited to participate in the landowner consultations. The Town conceded there, "may not be a good reason to withhold which households were invited," and acknowledged that "it would help the Town to show the number of landowners that were invited to give their recommendations." However, the Town continued to withhold the names and mailing addresses of those landowners under section 40 arguing that the names of individuals involved is not relevant and it would be an unreasonable invasion of privacy to disclose them.
- [8] Additionally, the Town argued that the summaries/interviews from the landowner consultations were properly redacted under section 40 pursuant to section 40(5)(f), noting that the template letter sent to landowners states, "each landowner will be given their own private meeting with the consultant to discuss how this information impacts their land at this point." The Town further argued that section 32(a) should apply even if section 40 does not, noting "the material gathered in confidence during these sessions was gathered for the benefit of the Town and used to determine the suitability, eligibility as well as the qualifications of each piece of land."
- [9] Finally, the Town argued that a specific landowner consultation summary that it heavily redacted pursuant to section 40(1) also took into consideration, "the Town was told by the

family that they were only willing to provide the information in a private session.” The Town suggested the landowners had requested the information not be disclosed as per section 40(3).

III COMPLAINANT’S POSITION

[10] The Complainant argued that the Maggie’s Place Development is “funded by public funds – property taxpayer’s funds and consequently they have a right to know all about this project.” The Complainant went on to argue that, “the write-up of the meeting does not say it is a private/privileged meeting nor should it be....in fact, the excerpt from the Council Meeting as background states that the project is ‘of great interest to residents of PCSP.’”

[11] Additionally, the Complainant quoted the Minutes from Council’s meeting on August 1, 2017, “The Town is satisfied the Public sector has recognized the exhaustive resident consultations that were undergone, and are still undergoing, met their needs,” stating, “there is no intention to deny information to the public.”

IV DECISION

[12] The Town was correct in identifying and defining the information contained in the responsive records as being personal information within the scope of section 2 of the *ATIPPA, 2015*, specifically:

Definitions

2. In this Act

(u) *"personal information" means recorded information about an identifiable individual, including*

(i) *the individual's name, address or telephone number,*

—

(ix) *the individual's personal views or opinions, except where they are about someone else;*

[13] At issue in this Complaint is the application of section 40:

Disclosure harmful to personal privacy

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.*

(2) *A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where*

....

(m) *the disclosure is not contrary to the public interest as described in subsection (3) and reveals only the following personal information about a third party:*

(i) *attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or*

(ii) *receipt of an honour or award granted by or through a public body.*

(3) *The disclosure of personal information under paragraph (2)(m) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.*

(4) *A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where*

...

(g) *the personal information consists of the third party's name where*

(i) *it appears with other personal information about the third party, or*

(ii) *the disclosure of the name itself would reveal personal information about the third party;*

...

(5) *In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether*

(a) *the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;*

...

(c) *the personal information is relevant to a fair determination of the applicant's rights;*

...

(f) *the personal information has been supplied in confidence;*

...

[14] Two issues must be settled:

- As personal information, would its disclosure result in an unreasonable invasion of a third party's personal privacy; and,
- Whether section 40(3) is applicable to withhold information the Town suggests falls within section 40(2)(m).

[15] The Town argues that section 40(5)(f) applies as landowner consultations were private meetings and therefore the personal information supplied was provided in confidence. While the template letter used to invite most of the landowners involved in the consultation process did use the term "private meeting," the letter itself did not make clear what that meant. Given these same landowners had previously been involved in public workshops, arguably the use of private could simply have indicated an exclusive meeting with the consultants rather than an expectation that privacy or confidentiality would be applied to the content of the meetings themselves. At no point in the letter is there any indication given to the landowners from the Town that they should have an expectation that what was discussed in those brief (15 minute) meetings would be held in confidence by the consultants or Town. In fact, given the consultations arose as part of an overall public vetting process, reasonably, there should have been minimal, if any, expectations of confidence. In the case of the one landowner whom the Town suggested had expressly requested privacy, no record of this request either being made or noted was provided by the Town.

[16] Further, in reviewing the application of section 40(1) and considering all of the relevant circumstances, section 40(5)(a) must be considered. Disclosure of records within section 40(1) may not constitute an unreasonable invasion of personal privacy where there is a desire to hold the activities of a Public Body to public scrutiny. If the public is to be, as stated

by the Town, “satisfied” that the consultations “met their needs,” these consultations and their contents should be available for public review.

[17] The Town also argued that section 40(3) applied to portions of the redacted material. This section may render a disclosure of personal information (attendance at a public event related to a public body) to be an unreasonable invasion of personal privacy. However, section 40(2)(m) refers to a third party’s attendance and participation in a public event or activity related to a Public Body. The Town previously made the argument that the landowner consultation process was exclusive in the sense that only the landowners were present with the consultant. The Town cannot have it both ways, and as such section 40(3) is not applicable.

[18] Finally, the Town also argued that section 32(a) applied to withhold disclosure of responsive records. Section 32(a) states:

Confidential evaluations

32. The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material, provided explicitly or implicitly in confidence, and compiled for the purpose of

(a) determining suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body;

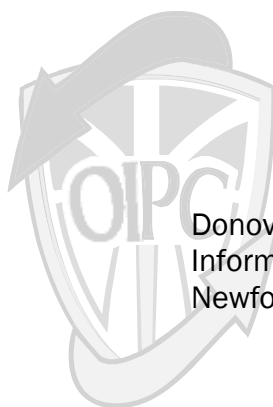
[19] This argument was made outside the initial 10 business day response time when a Public Body is meant to put forward all of its arguments as part of the complaint review process. In any event, the records in question fail to meet the definition set out in the section. As such, I do not have to consider this argument as it is not applicable to the material at issue.

V CONCLUSION

[20] I have reached the conclusion that the disclosure of the redacted material (including which landowners were sent consultation requests, and the meeting summaries/interviews from the landowner consultations) does not constitute an unreasonable invasion of the personal privacy of third parties pursuant to section 40 of the *ATIPPA, 2015*.

VI RECOMMENDATIONS

- [21] Under the authority of section 47 of the *ATIPPA, 2015*, I recommend that the Town grant access to the redacted portions of the responsive records, the information originally withheld under section 40 of the *ATIPPA, 2015*.
- [22] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the Town must give written notice of his or her decision with respect to this recommendation to the Commissioner and any person who was sent a copy of this Report (in this case, the Complainant) within 10 business days of receiving this Report.
- [23] Dated at St. John's, in the Province of Newfoundland and Labrador, this 18th day of January, 2018.



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