



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2019-024

September 13, 2019

Town of Stephenville

Summary:

The Applicant made a request to the Town of Stephenville for copies of declarations of conflict of interest (disclosure statements) by the Town Councillors and senior employees for the previous five years. The Town refused the request, stating that the records were withheld under section 22 (published material) of the *ATIPPA, 2015*. The Applicant requested this Office review the Town's decision. During the investigation by this Office it became apparent that there had been a misunderstanding regarding the interpretation of the Applicant's request. Once this was clarified, the Town further claimed the exceptions to disclosure under section 40 (disclosure harmful to personal privacy) and advised that the documents had been reviewed during a privileged meeting (section 28, local public body confidences). The Commissioner determined that the Town's initial claim of section 22 was moot. The Commissioner further determined that section 28 did not apply to the requested records, however it was determined that the disclosure statements were appropriately withheld under section 40.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 22 and 28.
[Municipalities Act, SNL 1999, Chapter M-24](#), section 210 and 213.

Authorities Relied On:

Newfoundland and Labrador OIPC [Report 2007-018](#); Report [2007-007](#)

I BACKGROUND

- [1] On May 11, 2019, the Town of Stephenville (“the Town”) received an access to information request pursuant to the *Access to Information and Protection of Privacy, 2015* (the “ATIPPA, 2015”) seeking the following information:

Requesting copies of declaration on the conflict of interest for the last five years for council and town employees.

- [2] On May 29, 2019, the Town denied the request, refusing access to the records in full. The town relied on the exception in section 22(1) of the *ATIPPA, 2015*:

22. (1) The head of a public body may refuse to disclose a record or part of a record that

(a) is published and is available to the public whether without cost or for purchase;

- [3] The Town’s response advised the Applicant that the requested information could be found on the Town’s website.

- [4] On May 30, 2019, the Applicant went back to the Town for clarification regarding the location of the information on the website. The Town responded the same day that whenever conflicts are declared, they are disclosed during the public meeting and recorded in the meeting minutes.

- [5] The Applicant was not satisfied with the Town’s response and filed a complaint with this Office. The Complainant stated in her complaint that she was looking for “the annual declaration of business interests and potential for conflict of interest” which members of Council and management make each year.

- [6] It was clarified during our informal resolution process that there had been a misunderstanding between the Complainant and the Town regarding the intent of the Complainant’s request. Although the request had been clarified, the Town advised that access to the information was still refused under section 40 of the *ATIPPA, 2015*. The Town also indicated that the disclosure statements had been reviewed in a privileged meeting.

[7] As an informal resolution could not be reached, the complaint proceeded to formal investigation in accordance with section 44(4) of the *ATIPPA, 2015*.

II TOWN'S POSITION

[8] The Town initially took the position that information regarding any conflicts of interest regarding Town Council and management was publicly available and accessible via the Town's website, where meeting minutes are posted. The website includes archived meeting minutes from 2014 to the present. When a conflict of interest in a matter arises, the Council member or employee states that they are in a conflict, indicates the nature of the conflict, and leaves the room during the duration of the discussion.

[9] Following the complaint to this Office, it was clarified that the Applicant had not intended her request to be for records of actual conflicts recorded in the Town's published minutes, but rather the disclosure statements themselves. In light of this clarification, the Town stated that the disclosure statements were being withheld pursuant to section 40 (disclosure harmful to personal privacy). The Town also advised that the disclosure statements were reviewed by other Council and municipal officials in a privileged meeting, per section 210 of the *Municipalities Act*.

III COMPLAINANT'S POSITION

[10] The Complainant states that she is not seeking confidential information of the Town Council and employees, but that she is seeking information regarding their partnerships with contractors and companies. It is the Complainant's belief that residents have a right to know that Council and management employees are honest in declaring conflicts regarding their partnerships.

IV DECISION

[11] At issue in this Report is the application of sections 22, 28, and 40 of the *ATIPPA, 2015* regarding the disclosure statements sought by the Complainant.

Section 22

[12] Section 22 of the *ATIPPA, 2015* states:

22. (1) The head of a public body may refuse to disclose a record or part of a record that

(a) is published and is available to the public whether without cost or for purchase; or

(b) is to be published or released to the public within 30 business days after the applicant's request is received.

(2) The head of a public body shall notify an applicant of the publication or release of information that the head has refused to give access to under paragraph (1)(b).

(3) Where the information is not published or released within 30 business days after the applicant's request is received, the head of the public body shall reconsider the request as if it were a new request received on the last day of that period, and access may not be refused under paragraph (1)(b).

The Town's application of section 22 was a result of a misunderstanding arising from the phrasing of the request. The Complainant's phrasing of "declarations on the conflict of interest" was not interpreted as a request for disclosure statements. Given that the request has since been clarified and is now understood by all parties to be a request for the disclosure statements, the Town's initial claim of section 22 is moot and will not be considered further.

Section 28

[13] The *ATIPPA, 2015* sets out the conditions under which a public body may refuse disclosure of local public body confidences under section 28(1):

28. (1) The head of a local public body may refuse to disclose to an applicant information that would reveal

- (a) *a draft of a resolution, by-law or other legal instrument by which the local public body acts;*
- (b) *a draft of a private Bill; or*
- (c) *the substance of deliberations of a meeting of its elected officials or governing body or a committee of its elected officials or governing body, where an Act authorizes the holding of a meeting in the absence of the public.*

[14] While the Town did not explicitly state that it had applied section 28 to the information, the Town did advise the OIPC that the documents had been considered in a privileged meeting of the Town Council, in accordance with section 210 of the *Municipalities Act*.

[15] Section 210 of the *Municipalities Act* outlines the specific information each disclosure statement must contain, as well as filing requirements. Section 210(5) of the *Municipalities Act* states that completed disclosure statements must be filed with the town clerk and reviewed at a privileged meeting of the council not more than 30 days after the date required for filing.

210. (1) The councillors, clerk, manager, treasurer and department heads of a municipality, shall complete annually, a disclosure statement in a form which the council may establish setting out the interest of a councillor or an employee that may place him or her in a conflict of interest.

(2) A disclosure statement completed under subsection (1) shall list

- (a) real property or an interest in real property within the municipality that is owned by the councillor or employee;*
- (b) corporations in which the councillor or employee holds 10% or more shares;*
- (c) partnerships and sole proprietorships in which the councillor or employee holds a 10% or more interest; and*
- (d) businesses located within the municipality that are owned by the councillor or employee.*

(3) A disclosure statement required under subsection (1) shall be filed with the council by

- (a) *a councillor, not more than 60 days after taking office immediately after his or her election or appointment and not later than March 1 in each subsequent year; and*
- (b) *the clerk, manager, treasurer and department heads, not more than 60 days after commencing employment with the council and not later than March 1 in each subsequent year.*

(4) Notwithstanding subsection (3), a change in the information contained in a disclosure statement filed under that subsection shall be reported to the council, in writing, by a councillor, clerk, manager, treasurer or department head not more than 60 days after that change occurs.

(5) A disclosure statement filed under this section shall be retained by the clerk and reviewed at a privileged meeting of the council not more than 30 days after the date required for filing under subsections (3) and (4).

[16] Section 28(1)(c) of the *ATIPPA, 2015* requires that another Act authorize the holding of a meeting “in the absence of the public.” Section 213 of the *Municipalities Act* sets out the criteria for privileged meetings:

213. (1) A meeting of a council shall be open to the public unless it is held as a privileged meeting or declared by vote of the councillors present at the meeting to be a privileged meeting.

(2) Where a meeting is held as a privileged meeting or declared to be a privileged meeting, all members of the public present at the meeting shall leave.

(3) A decision of the councillors made at a privileged meeting shall not be valid until that decision has been ratified by a vote of the councillors at a public meeting.

[17] The Town held meetings annually to review the disclosure statements, as set out in the *Municipalities Act*. The meetings were held as privileged, as evidenced by the title of “Privileged Meeting” and a note in the preamble advising that the meeting was privileged. The meetings were held in the absence of any members of the public. Pursuant to the conditions set out in section 213 of the *Municipalities Act*, this Office finds that the meetings were privileged within the meaning of section 28(1) of the *ATIPPA, 2015*.

[18] The term “substance of deliberations” has been considered by this Office on several occasions, including in Report 2007-018:

[36] Therefore, in order to refuse to disclose information on the basis of [then] section 19(1)(c) a public body must prove that it is likely that the disclosure of the information would permit the reader to draw accurate inferences about the substance of deliberations that took place in the meeting. The substance of the deliberations would include such things as what was said by individuals at the meeting, the opinions expressed, how individuals at the meeting voted, and the arguments given in favour of or against taking a particular action.

[19] Although the disclosure statements were reviewed at the meetings, per section 210 of the *Municipalities Act, 1999*, no evidence was advanced to indicate that discussions or deliberations accompanied the review of the disclosure statements. This Office therefore finds that the disclosure statements cannot be withheld under section 28 of the *ATIPPA, 2015*.

Section 40

[20] During the investigation by this Office, the Town stated that the requested records were being withheld in accordance with section 40 of the *ATIPPA, 2015*. The Town advised that disclosure of the statements would be an unreasonable invasion of privacy “due to the highly personal nature of their contents”. The Town specified that it believed the information constituted an unreasonable invasion of privacy per section 40(4)(g)(i):

40.(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,*

[21] As noted earlier in this report, disclosure statements contain significant financial information about the individual to whom the statement pertains. This information includes real property, corporations, partnerships, and businesses owned by the individual or in which the individual has an interest. The disclosure statement specifically notes that the list consists of a “true and complete list of [individual’s] financial interest.”

[22] The issue of whether disclosure statements consisted of personal information was previously consider by this Office in Report 2007-007:

[23] *It is evident from section 210(2) of the Municipalities Act, 1999 that a disclosure statement is intended to reveal certain financial information of identified individuals. The Concise Oxford English Dictionary, 10th Edition, defines “finances” as “the monetary resources and affairs of a state, organization, or person.” [Former] Section 2(o)(vii) of the [then] ATIPPA expressly includes an individual’s financial history as personal information. Clearly, the responsive record by its very nature constitutes the personal information of identifiable individuals for the purposes of the [then] ATIPPA.*

[23] Under the *ATIPPA, 2015*, section 2(u)(vii) includes “information about the individual’s educational, financial, criminal or employment status or history.”

[24] In the same report, former Commissioner Wall stated that the disclosure statements are inherently confidential, and not required to be publicly disclosed:

[24] *[...] Clearly, there is an expectation of confidentiality associated with the disclosure statements of Councillors and staff. I also note that section 215(1) of the Municipalities Act, 1999 lists a number of documents that must be made available for public inspection, but that list does not include disclosure statements as required by section 210.*

[25] The decision in Report 2007-007 was in accordance with the provisions set out in the former *Access to Information and Protection of Privacy Act (ATIPPA)*, before that legislation was repealed and replaced with the current *ATIPPA, 2015*. The former *ATIPPA* did not require the head of a public body to consider relevant circumstances when contemplating disclosure of personal information. With the *ATIPPA, 2015*, section 40(5) does set out this obligation:

40. (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;*
- (b) the disclosure is likely to promote public health and safety or the protection of the environment;*
- (c) the personal information is relevant to a fair determination of the applicant’s rights;*

- (d) *the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;*
- (e) *the third party will be exposed unfairly to financial or other harm;*
- (f) *the personal information has been supplied in confidence;*
- (g) *the personal information is likely to be inaccurate or unreliable;*
- (h) *the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;*
- (i) *the personal information was originally provided to the applicant; and*
- (j) *the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.*

[26] The Complainant's position is that the information ought to be made available to the public to ensure that there is a mechanism in place to hold Council and the Town publicly accountable. The Complainant's position reflects section 40(5)(a) above.

[27] However, as outlined earlier, a mechanism to hold public bodies accountable already exists in the form of the *Municipalities Act, 1999*. The legislation exists to prescribe rules and regulations that municipal governments must follow, as well as any consequences that occur if there is a violation of the *Municipalities Act, 1999*. In this instance, the accountability mechanism is that members of Council are made aware, through review of disclosure statements, of information necessary to determine whether they or their colleagues, both on Council and among management employees, may be in a conflict of interest on a given matter. Therefore, it is not necessary that the personal financial information of Council or senior management be disclosed to the public in order to ensure that accountability is maintained.

[28] This Office finds that the information contained within the disclosure statements is the personal information of the Town Councillors and senior employees, and that disclosure of such information would amount to an unreasonable invasion of personal privacy. This Office concludes that the Town appropriately applied section 40 of the *ATIPPA, 2015* in refusing to disclose the personal information in the requested records.

[29] The disclosure statements are in a standard format listing categories of information requested, date, signature, etc. The Complainant confirmed to this Office that if she will not be able to obtain the financial information in the disclosure statements, then she is not interested in receiving the more generic information in the remainder of the record.

V CONCLUSION

[30] This Office finds that the Town is not authorized to withhold the records under section 28(1)(c), however the Town correctly withheld the records in accordance with section 40.

VI RECOMMENDATIONS

[31] Under the authority of section 47 of the *ATIPPA, 2015*, I recommend that the head of the Town of Stephenville continue to withhold the requested records in their entirety.

[32] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of Town of Stephenville 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 within 10 business days of receiving this Report.

[33] Dated at St. John's, in the Province of Newfoundland and Labrador, this 13th day of September 2019.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador