



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2013-018

November 28, 2013

### Royal Newfoundland Constabulary

**Summary:**

The Applicant requested, from the RNC, the investigation file on two named individuals that was conducted by a particular officer of the Economic Crime Unit. The RNC provided some information to the Applicant but withheld some citing section 30(4) (b) and (e). The Commissioner found that section 30 had been properly applied to withhold the information with the exception of some information that was administrative. This administrative information, while peripheral to the Applicant's purpose, is responsive to the request, and there is no basis for withholding it. The Commissioner recommended that the RNC provide this administrative information to the Applicant.

**Statutes Cited:**

*Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1, as amended, s. 30(4).

**Authorities Cited:**

Alberta OIPC Order 69-006, Order F2009-038.

## I BACKGROUND

- [1] Pursuant to the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*”) the Applicant submitted an access to information request on December 31, 2012 to the Royal Newfoundland Constabulary (“RNC”). The request sought disclosure of records as follows:

*Investigation file of [2 named individuals, neither of whom was the applicant] conducted by Constable [name] of the Economic Crime Unit.*

- [2] The RNC released some information to the Applicant but denied access to the remainder relying on section 30(4). This section enumerates circumstances under which the release of a third party’s personal information would be an unreasonable invasion of privacy. The RNC asserted that two of those circumstances apply to the records at issue – 30(4)(b) (identifiable part of a law enforcement record) and 30(4)(e) (bank account information).
- [3] In a Request for Review received at this Office on February 21, 2013, the Applicant asked that this Office review the RNC’s decision. Attempts to resolve this Request for Review by informal resolution were not successful, and by letters dated August 21, 2013 both the RNC and the Applicant were advised that the Request for Review had been referred for formal investigation pursuant to section 46(2) of the *ATIPPA*. As part of the formal investigation process, both parties were given the opportunity to provide written submissions to this Office in accordance with section 47.

## II PUBLIC BODY’S SUBMISSION

- [4] The RNC provided a formal submission that was received in this Office on September 3, 2013. The RNC reiterated their reliance on section 30(4)(b) and (e), and stated they had considered all of the relevant considerations set out in section 30(5) in coming to the conclusion that release of the requested information would be an unreasonable invasion of privacy. The RNC also submitted that the refusal to provide the requested information was justified by section 27(1)(b).

### III APPLICANT'S SUBMISSION

- [5] The Applicant did not provide a formal submission.

### IV DISCUSSION

- [6] The relevant portions of section 30 are as follows:

*30. (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.*

[...]

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

[...]

*(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;*

[...]

*(e) the personal information consists of an individual's bank account information or credit card information;*

*(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*

[...]

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

- [7] Under section 30(4)(b), disclosure of personal information is presumed to be an unreasonable invasion of privacy where the personal information is an identifiable part of a law enforcement matter, except to the extent that it is necessary to dispose of the law enforcement matter or continue the investigation. In this case, the personal information contained in the records at issue is clearly “an identifiable part of a law enforcement record”, as the records were created as part of a police investigation. In this case, the law enforcement matter is a police criminal investigation. As such, disclosure is presumed to be an unreasonable invasion of privacy, except to the extent that disclosure is necessary to dispose of the police criminal investigation. The investigation is closed, no

charges were laid as result of that investigation, and there was no other related proceeding. As a result, there is no basis for a disclosure of personal information as outlined in section 30(4)(b).

[8] Further, it is my opinion that a civil proceeding that might arise out of the alleged incident does not qualify as a “law enforcement matter”. This is supported by the definition of “law enforcement found in section 2(i) of the *ATIPPA* which reads:

2 (i) *"law enforcement" means*

(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;*

In Alberta Order 96-006, the Commissioner stated that “[b]oth “law” and “law enforcement” should encompass the notion of a violation of a statute or regulation, and a penalty or sanction imposed under that same statute or regulation.”

[9] Of course, section 30(4)(b) is a rebuttable presumption, and I have also considered the factors in section 30(5). The purpose of section 30(5) is to give examples of the circumstances which must be considered before making a final determination under section 30(1) or section 30(4). However, I see none of the circumstances outlined in section 30(5) as weighing in favor of disclosure. The best argument for a relevant circumstance might be section 30(5)(c)(the personal information is relevant to a fair determination of the applicant’s rights). However in the police investigation in question, the rights of the Applicant herself are not at issue. She was neither an alleged victim nor perpetrator, and also does not appear to have any standing to make a civil claim. This renders this consideration inapplicable.

[10] Further, even if section 30(5)(c) was applicable, the information available to the Applicant would be quite limited in scope. In Alberta Order F2009-038, the applicant (who was involved in a motor vehicle accident) sought access to information including witness statements, as part of civil suit arising out of the accident. The Commissioner found that the right of the Applicant to bring a lawsuit for damages is a legal right, that the information requested had some bearing on the

determination of her rights, and was also required to prepare for the proceeding. However, in considering the section equivalent to our 30(5)(c) the Commissioner found that the body of the witness statements were not available to the applicant due to the possibility that disclosure could in some cases, expose the witnesses to civil liability. However, the names of the witnesses were recommended for release. The Commissioner found that the names were sufficient to enable the Applicant to contact the witnesses and speak with them or obtain statements from them, which would assist in preparing the civil case.

[11] With respect to section 30(4)(e), I have reviewed the information and find that this section is applicable to some of the information contained in the record, as it is bank account information. I am therefore in agreement with the RNC that any bank account information be severed.

[12] The Public Body did not raise section 27 until it made its formal submission. Generally, this Office will not consider the application of exceptions claimed after the public body's initial response to the Request for Review. A public body is required, under section 12 of the *ATIPPA*, to inform an applicant what sections of the *ATIPPA* it is relying on when it responds to the applicant's access request. If the applicant then comes to this Office with a Request for Review, it has long been the policy of this Office that if public bodies wish to claim additional exceptions to justify their refusal to release information it must be done within 14 days of the public body being notified of the Request for Review. After that time, this Office will not accept claims of any further discretionary exceptions. However, section 27 (like section 30) is a mandatory exception. As such, if there is sufficient evidence to show that section 27 applies to the information in question, then I am bound to consider its application, as I cannot recommend release of information which the *ATIPPA* mandates must be withheld. In the circumstances of this case, I have found that section 30 applies to withhold the information. As such, an examination of the application of section 27 is not necessary.

## V CONCLUSION

[13] Having reviewed the record, it is my opinion that the vast majority of the record has been properly withheld under section 30. However, there is some information which is administrative in nature that should be released to the Applicant. While this information is peripheral to the purpose of the request, it forms part of the responsive record, and thus, I cannot recommend it be withheld as it is not personal information.

## VI RECOMMENDATIONS

[14] Under the authority of section 49(1) of the *ATIPPA*, I recommend that the RNC release to the Applicant the information highlighted in yellow on a copy of the responsive record attached to this Report.

[15] Under the authority of section 50 of the *ATIPPA*, I direct the head of the RNC to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the final decision of the RNC with respect to this Report.

[16] Please note that within 30 days of receiving the decision of the RNC under section 50, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador Trial Division in accordance with section 60 of the *ATIPPA*.

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 28<sup>th</sup> day of November, 2013.

Ed P. Ring  
Information and Privacy Commissioner  
Newfoundland and Labrador

## ADDENDUM

This report was originally signed on November 28, 2013. It was amended on November 19, 2014 to correct an error on page 2 in the date the access request was received by the RNC.

Ed P. Ring  
Information and Privacy Commissioner  
Newfoundland and Labrador

