



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

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NEWFOUNDLAND AND LABRADOR

## Report A-2024-010

March 15, 2024

### Department of Municipal and Provincial Affairs

**Summary:**

The Complainant made an access to information request to the Department of Municipal and Provincial Affairs for records about the establishment of a beach reserve. The Department provided responsive records, but withheld some information pursuant to sections 29 (policy advice), 30 (legal advice), 31 (disclosure harmful to law enforcement), and 40 (disclosure harmful to personal privacy). The Complainant made a complaint to this Office to review the decision by the Department to withhold this information. The Commissioner found that the exceptions to access had been properly applied and the Department could continue to withhold this information.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 29, 30, 31, and 40.

**Authorities Relied On:**

[Newfoundland and Labrador \(Information and Privacy Commissioner\) v. Eastern Regional Integrated Health Authority, 2015 NLTD\(G\) 183.](#)

## BACKGROUND

- [1] The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* to the Department of Provincial and Municipal Affairs for the following:

*Information on the establishment of the Ragged Beach Reserve and how it was initiated.*

- [2] The Department's search produced more than 700 pages of responsive records. While little of the information was withheld, there were redactions pursuant to sections 29(1)(a), 30(1)(a), 31(1)(l), and 40(1) of *ATIPPA, 2015* throughout the documents. The Complainant questions whether the Department properly applied these exceptions to access.
- [3] As informal resolution was unsuccessful, the Complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## PUBLIC BODY'S POSITION

- [4] It is the position of the Department that it correctly applied *ATIPPA, 2015* to its assessment of the responsive records provided to the Complainant. The material withheld specifically addressed a departmental analysis of the Ragged Beach issue, a legal opinion provided to the Department, the electronic pathways to government files, and the personal information of third parties.

## COMPLAINANT'S POSITION

- [5] The Complainant states that some of the information that the Department has withheld is preventing them from fully understanding how the government made its decision on the Ragged Beach Reserve. The Complainant believes that some or all of the redacted information could be disclosed to support government transparency about its decision on the Reserve.

## DECISION

- [6] The provisions of *ATIPPA, 2015* relevant to this matter are as follows:

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

*(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;*

...

*30.(1) A public body may refuse to disclose to an applicant information*

*(a) that is subject to solicitor client privilege or litigation privilege of a public body;*

...

*31.(1) A head of a public body may refuse to disclose information to an applicant where the disclosures could reasonably be expected to*

...

*(l) reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system, or a communication system;*

...

*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.*

#### **Information Withheld Under Section 29(1)(a)**

- [7] Among the responsive records is a document entitled “Decision Note: Department of Environment and Climate Change,” which provides an overview of the issue under consideration, as well as analysis of the issue and recommended actions to be taken.
- [8] Withholding information pursuant to section 29(1) requires a public body to conduct a line-by-line review of the material to which the exception is being applied. The Department did such an analysis in this case. There is a section in the Decision Note that is called “Analysis”, but it is not all withheld. For example, facts stated in the analysis section are disclosed. The information that is withheld is clearly analysis, as it discusses considerations regarding certain options.
- [9] Within the Decision Note, all of the material under the heading “Action Being Taken” is withheld. This material consists exclusively of recommendations that Environment and Climate Change could undertake in the future and the Department has the right to withhold such information. Overall, the Department has properly applied section 29(1)(a) to the responsive records.

#### **Information Withheld Under Section 30(1)(a)**

- [10] Section 30(1)(a) allows a public body to withhold information that is claimed to be protected by solicitor-client privilege. The standard against which to assess claims of solicitor-client privilege in the context of *ATIPPA, 2015* was established by the Supreme Court of Newfoundland and Labrador in the 2015 decision of *Newfoundland and Labrador (Information and Privacy Commissioner) v. Eastern*

*Regional Integrated Health Authority*. For information to be covered by solicitor-client privilege, it must be:

- (i) a communication between a solicitor, acting in his or her professional capacity, and the client;
- (ii) the communication must entail the seeking or giving of legal advice; and
- (iii) the communication must be intended to be confidential.

[11] This Office has reviewed the information that was withheld pursuant to section 30(1)(a) and can confirm that it is a communication between a client and a solicitor acting in their professional capacity; that the communication did indeed involve the seeking and giving of legal advice; and that it was intended to be confidential. In this instance, section 30(1)(a) is properly applied to the responsive records.

#### **Information Withheld Under Section 31(1)(l)**

[12] Section 31(1)(l) is applied periodically throughout the records. It is used to withhold information on electronic filing systems and the pathways used to store electronic files. This Office has accepted the application of section 31(1)(l) for these purposes in the past. Also withheld is information regarding conference call numbers and identification codes, which this Office has also accepted in the past. The Department has properly applied section 31(1)(l) to the responsive records.

#### **Information Withheld Under Section 40(1)**

[13] The responsive records in this matter consist of dozens of different documents, many of which are letters or emails from third parties. These records contain a variety of information that could serve to identify the third party, such as names, phone numbers, email addresses, and home addresses. In a few instances, the responsive records also contain information about the personal lives of third parties. All of this information is withheld pursuant to section 40(1) of *ATIPPA, 2015*.

[14] In reviewing the factors in section 40(5) that should be considered in determining whether disclosing this information about third parties would be an unreasonable invasion of personal privacy, it is important to recognize that disclosing the identities of the writers, who are private citizens, is not necessary in order for the Complainant to see the issues and concerns that were brought forward. There is nothing to suggest that these third parties desired or consented to have their identities and personal information disclosed. Section 40(1) is properly applied to the responsive records.

### **RECOMMENDATIONS**

[15] Under the authority of section 47 of *ATIPPA 2015*, I recommend that the Department of Municipal and Provincial Affairs maintain its position on the matter.

[16] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Municipal and Provincial Affairs must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 15<sup>th</sup> day of March 2024.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador