



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-028

June 20, 2024

Royal Newfoundland Constabulary

Summary:

The Complainant made an access request to the Royal Newfoundland Constabulary (RNC) for the full police file for a motor vehicle collision in which the Complainant had been involved. The RNC provided its file, but some information was withheld pursuant to sections 31 (law enforcement) and 40 (disclosure harmful to personal privacy) of the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015). The RNC also withheld a vehicle collision report prepared by the investigating officer on the grounds that access to that record is governed by the **Highway Traffic Act**. The Commissioner found that as third party personal information had been previously disclosed to the Complainant through a process under the Highway Traffic Act, then it would not be an unreasonable invasion of personal privacy to provide that same information in response to an access to information request. The Commissioner also recommended that the RNC disclose information previously withheld under section 31 of ATIPPA, 2015.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 3, 7, 31, and 40.

[Highway Traffic Act](#), RSNL 1990, c. H-3, sections 169, 170, 171, 173, 174, and 174.1.

BACKGROUND

- [1] The Complainant made a request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the Royal Newfoundland Constabulary (RNC) for:

RNC File # [number]

We are in possession of a Vehicle Collision Report dated [date] issued by Constable [name]. We are seeking the full police report for the subject motor vehicle accident, which occurred at [location] on [date] involving [name] and [Complainant].

- [2] The RNC provided the requested investigation file to the Complainant, withholding some information. The Vehicle Collision Report (VCR) was withheld on the grounds that access to that record is provided by the **Highway Traffic Act** (HTA) through a process referenced in Schedule A of ATIPPA, 2015 and, therefore, that process prevails over ATIPPA, 2015. Throughout the file, further information was also withheld pursuant to sections 31 (law enforcement) and 40 (disclosure harmful to personal privacy).
- [3] Dissatisfied with the decision to withhold information which the Complainant believed to be necessary for a fair determination of their rights, the Complainant filed a complaint with this Office.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015.

PUBLIC BODY'S POSITION

- [5] In response to our investigation, the RNC advised that it had applied section 40 to withhold the personal information of third parties, disclosing only the personal information of the Complainant. Section 31 was used to withhold information which the RNC believed would reveal investigative techniques utilized by the RNC in completing an investigation. Information withheld under section 31 also included statements or opinions of the investigating officer.

[6] The RNC advised that it had not provided the Vehicle Collision Report on the grounds the document is in the custody or control of the Motor Registration Division; and, further, there are other means for obtaining the Vehicle Collision Report and therefore sections 3(3) and 7(2) of ATIPPA, 2015 are applicable. The RNC also notes that the Complainant has already obtained the VCR through the ordinary process provided by the HTA and the Motor Registration Division.

COMPLAINANT'S POSITION

[7] The Complainant submits that access to the information contained in the RNC's investigation file is necessary to a fair determination of their rights in connection with the motor vehicle accident. The Complainant relies on section 40(5)(c) which states that when determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, a specified consideration is whether the personal information is relevant to a fair determination of the access to information applicant's rights. Access to the full investigation report would, the Complainant submits, allow them to make an appropriate assessment of liability for the motor vehicle accident and inform any decision to pursue litigation.

ISSUES

[8] At issue in this report is whether the RNC has appropriately withheld information pursuant to sections 31 and 40; as well as whether the RNC is correct in its determination that it is entitled to withhold the Vehicle Collision Report and the information contained in it.

DECISION

Vehicle Collision Report and Sections 3 and 7

[9] The RNC submits that other processes exist for accessing the VCR, which is appended to the RNC's case file but has been withheld. Section 3(3) of ATIPPA, 2015 notes that the legislation does not replace other procedures for access to information. While true, that does not necessarily mean that ATIPPA, 2015 does not apply when alternate processes also exist.

[10] However, section 7(2) of ATIPPA, 2015 further states that where access to a record is prohibited or restricted by, or the right to access a record is provided in a provision in another Act that is included in Schedule A of ATIPPA, 2015, that provision shall prevail over ATIPPA, 2015. Schedule A of ATIPPA, 2015 includes sections 173, 174, and 174.1 of the HTA. Sections 173 and 174.1 provide for restrictions to access to reports about motor vehicle accidents or doctor's reports about a driver's health. Section 174 provides a person involved in a motor vehicle accident (as well as their solicitor or an insurer) the right to obtain information from a report of that accident. The type of information they are entitled to, includes personal information that might otherwise be excepted by section 40 of ATIPPA, 2015:

- the date, time and place of the accident;
- the identification of vehicles involved in the accident;
- the name and address of the parties to or involved in the accident;
- the names and addresses of witnesses to the accident;
- the names and addresses of persons or bodies to whom the report was made;
- the name and address of a peace officer who investigated the accident;
- the weather and highway conditions at the time of the accident; and
- the name and address of an insurance company that has issued a policy insuring a party to or involved in an accident, together with the policy number applicable to that policy.

[11] Section 174(5) further states that a person entitled to information under section 174 may access it by paying the fee set by the Minister.

[12] Considering section 174 of the HTA altogether, along with section 7 and Schedule A of ATIPPA, 2015, I am satisfied that the HTA creates a process for obtaining a VCR. However, to the extent this process prevails over ATIPPA, 2015, it is to prevail over any provision of ATIPPA, 2015 that might require the VCR to be withheld from the Complainant. As such, the RNC may not withhold the VCR appended to its investigation file.

Section 40

[13] Much of the information that has been redacted has been redacted pursuant to section 40. As a preliminary matter, we find that some of the information the RNC has withheld pursuant to section 40 is not personal information and section 40 cannot apply. Personal information is defined in ATIPPA, 2015 as recorded information about an identifiable individual. Information which has been withheld despite not being personal information includes:

- The name of the business which owned the other vehicle involved in the accident, at pages 5, 8, and 9;
- A generic description of the other vehicle involved in the accident at pages 7 and 8; and
- The name of the towing company which removed one of the vehicles at pages 8, 9, and 23;

Such information should be disclosed by the RNC.

[14] Where a public body has withheld personal information pursuant to section 40(1) or (4), section 40(5) requires that a public body consider all relevant circumstances when determining whether the disclosure of personal information would constitute an unreasonable invasion of personal privacy. The circumstances at section 40(5) are not exhaustive, but the Complainant has raised three of these considerations in support of their access to the withheld 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:
- (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;
 - ...

(i) the personal information was originally provided to the applicant.

[15] With respect to 40(5)(a), the disclosure of third party personal information would not assist in subjecting the activities of the RNC to public scrutiny and this factor does not weigh in favour of disclosure.

[16] With respect to 40(5)(c), key third party personal information has already been made available to the Complainant through the VCR. It is not clear whether disclosure of personal information through the access to information process would further the Complainant's efforts to obtain information relevant to a fair determination of their rights and this provision does not weigh in favour of or against disclosure.

[17] However, 40(5)(i) bears consideration: through the VCR process, the personal information contained in the RNC file was originally provided to the Complainant. What the RNC has withheld from its file is the same information already appropriately disclosed to the Complainant through a statutory process set out in the HTA. That the Complainant has lawfully obtained the same information in the VCR (a document which largely draws its information from the RNC file) weighs in favour of disclosure.

[18] Considering the provisions of the HTA and section 40(5)(i) of ATIPPA, 2015 together, I find that it would not be an unreasonable invasion of personal privacy for the RNC to disclose to the Complainant the same personal information contained in its investigation file as is authorized to be disclosed in the VCR.

Section 31

[19] At one place in the investigation file, a reference is made to the use of certain techniques in the course of investigating the motor vehicle collision. The RNC submits that disclosing this information would reveal investigative techniques and that the RNC has the discretion to withhold this information under section 31(1)(c). We disagree. The technology or technique referenced in the redacted passage is a well-known and publicly acknowledged tool of the RNC and police services generally. Various RNC documents, including its annual reports and website, reference the redacted technology and that members are trained in its use. Release

of this information could not reasonably be expected to, on its own, reveal investigative techniques used by or likely to be used by the RNC.

[20] Information has also been withheld by the RNC pursuant to section 31(2)(b):

31(2) The head of a public body may refuse to disclose information to an applicant if the information

...

(b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record.

[21] The RNC submits that passages withheld pursuant to this exception contain statements and opinions of the officer who completed the investigation of the motor vehicle accident and disclosure could expose the RNC to civil liability. I disagree that the RNC has met the burden of establishing that the RNC could reasonably be exposed to civil liability. The information redacted consists of two passages detailing the officer's description of a dashcam video of the motor vehicle accident which could, conceivably, be used in civil proceedings related to the accident. However, no one other than the officer is quoted or paraphrased in the description. Therefore section 31(2)(b) does not apply.

RECOMMENDATIONS

[22] Under section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Royal Newfoundland Constabulary, within 15 business days of receipt of this Report, provide a new final response to the Complainant which discloses all personal information listed at section 174 of the **Highway Traffic Act**.

[23] Under section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Royal Newfoundland Constabulary, within 10 business days of receipt of this Report, disclose to the Complainant that information on pages 5, 7, 8, 9, and 23 which is not personal information, as noted in paragraph 13, above, previously withheld pursuant to section 40.

[24] Under section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Royal Newfoundland Constabulary, within 10 business days of receipt of this Report, disclose to the Complainant information on page 8 of its investigation file previously withheld pursuant to section 31(1)(c).

[25] Under section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Royal Newfoundland Constabulary, within 10 business days of receipt of this Report, disclose to the Complainant the information previously withheld pursuant to section 31(2)(b).

[26] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Royal Newfoundland Constabulary 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.

[27] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of June, 2024.



Jacqueline Lake Kavanagh
Information and Privacy Commissioner (Acting)
Newfoundland and Labrador