



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2024-043

October 1, 2024

### Department of Justice and Public Safety

**Summary:**

The Complainant made a request under the **Access to Information and Protection of Privacy Act, 2015** to the Department of Justice and Public Safety seeking a spreadsheet containing specific details on deaths that occurred between 2000 and 2024 in the Department, Police Custody, and Correctional Services institutions across the province and examined by the Office of the Chief Medical Examiner. The Department located a responsive record, but determined that much of the spreadsheet information fell under a mandatory exception to access at section 40 – disclosure harmful to personal privacy. It therefore provided the record disclosing some of the requested information while redacting the rest. The Complainant asked the Commissioner to review the redactions. The Commissioner found the Department was for the most part correct in applying redactions to the record, however, recommended it release some additional information as well.

**Statutes Cited:**

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

## BACKGROUND

[1] The Complainant made an **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) request to the Department of Justice and Public Safety (JPS) seeking the following:

A detailed machine readable spreadsheet list of all deaths from the year 2000 to 2024 that occur [sic] in provincial Department of Justice and Public Safety, Police Custody and Correctional Services institutions across the province of Newfoundland and Labrador, which have been examined by the Office of the Chief Medical Examiner, including:

- the date of death,
- full name of the deceased,
- age of deceased,
- gender of deceased,
- race of deceased,
- name of the institution in which the deceased was in custody,
- cause of death,
- manner of death, and
- description of the circumstances of the death.

(Date Range for Record Search: From 01/01/2000 to 04/26/2024)

[2] JPS provided the Complainant a spreadsheet that included the following headings:

- Year,
- Date of Death,
- Name,
- Age,
- Biological Sex,
- Institution,
- Manner, and
- Cause.

The chart disclosed all information under the Institution and Manner categories, but redacted all information under all other categories.

[3] The Complainant made a complaint to this Office seeking a review of the decision by JPS to withhold information from the spreadsheet.

- [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] JPS determined that it must withhold identifiable personal information pursuant to section 40(1). This specifically included columns in the spreadsheet containing information regarding: year, date of death, name, age, biological sex, and cause.
- [6] In determining whether section 40(1) was appropriate, JPS reviewed subsection 40(2), which lists circumstances where the release of personal information is not an unreasonable invasion of privacy, and concluded the personal information withheld does not fall under this subsection.
- [7] Next, it reviewed subsection 40(4), which lists circumstances where the release of personal information is presumed to be an unreasonable invasion of privacy. In reviewing this subsection, JPS determined that subsection 40(4)(g)(i) - the personal information consists of the third party's name where it appears with other personal information about the third party - was applicable.
- [8] Finally, JPS reviewed subsection 40(5), which lists additional circumstances to consider when determining whether the release of personal information would be an unreasonable invasion of privacy. Some of those circumstances weigh in favour of disclosure, while others weigh in favour of withholding. In its review of this subsection, JPS determined that none of the factors weighing in favour of disclosure were applicable, however concluded one factor weighed in favour of withholding. Section 40(5)(j) calls on public bodies to consider whether 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.

## COMPLAINANT'S POSITION

[9] The Complainant took issue with the application of section 40, noting some of the information redacted by JPS is available publicly, such as the date of death, institution, age and manner of death.

[10] The Complainant went on to highlight that without knowing the year of the death, they are unable to interpret the information provided.

## DECISION

[11] The relevant provisions of ATIPPA, 2015 are the definition of personal information at section 2(u), and section 40 (disclosure harmful to personal privacy):

2. In this Act

...

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

- (i) the individual's name, address or telephone number,
- (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
- (iii) the individual's age, sex, sexual orientation, marital status or family status,
- (iv) an identifying number, symbol or other particular assigned to the individual,
- (v) the individual's fingerprints, blood type or inheritable characteristics,
- (vi) information about the individual's health care status or history, including a physical or mental disability,
- (vii) information about the individual's educational, financial, criminal or employment status or history,
- (viii) the opinions of a person about the individual, and
- (ix) the individual's personal views or opinions, except where they are about someone else;

...

- 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
- (a) the applicant is the individual to whom the information relates;
  - (b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;
  - (c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is given in the form appropriate in the circumstances to the third party to whom the information relates;
  - (d) an Act or regulation of the province or of Canada authorizes the disclosure;
  - (e) the disclosure is for a research or statistical purpose and is in accordance with section 70 ;
  - (f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;
  - (g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;
  - (h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;
  - (i) public access to the information is provided under the *Financial Administration Act*;
  - (j) the information is about expenses incurred by a third party while travelling at the expense of a public body;
  - (k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;
  - (l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including

- (i) personal information that is supplied in support of the application for the benefit, or
- (ii) personal information that relates to eligibility for income and employment support under the *Income and Employment Support Act* or to the determination of income or employment support levels; or
- (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.
- ...
- (4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where
  - (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
  - (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;
  - (c) the personal information relates to employment or educational history;
  - (d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;
  - (e) the personal information consists of an individual's bank account information or credit card information;
  - (f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;
  - (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; or

- (h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.
- (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.

[12] Generally, we are in agreement with most of JPS's reasoning and application of the legislation here: the information consists of a third party's name where it appears with other information about that third party and is therefore presumed to be an unreasonable invasion of their privacy pursuant to section 40(4)(g)(i). To test that presumption, public body decision-makers are required to consider all relevant circumstances in determining whether a disclosure would be an unreasonable invasion of privacy, including those circumstances specifically enumerated in section 40(5), which was done in this case. As part of that

consideration, JPS determined that the information is about deceased persons who all died within the past 20 years, a relatively short timeframe, leading it to conclude that disclosure would be an unreasonable invasion of personal privacy.

[13] I concur that the information contained under the columns for date of death, name, age, and biological sex were appropriately withheld under section 40 on the basis put forth by JPS. Furthermore, in light of the relatively small number of individuals (twenty) on the list, if information from the “cause” category were disclosed, in combination with other information already available, it would also constitute an unreasonable invasion of privacy.

[14] While the Complainant has noted some of this information has been released publicly, this is only true for some of the parties on this list. For example, cause of death has been released for a few where there have been public inquiries held with regards to their deaths. However, there are a number of persons included in this record for whom this information has been kept private by their families and therefore would be considered an unreasonable invasion of personal privacy if disclosed.

[15] The one remaining category is year. I am satisfied that the year, appearing along with the names of the institutions involved and manner of death, would not constitute an unreasonable invasion of privacy, and that information should therefore be disclosed.

## RECOMMENDATIONS

[16] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Department of Justice and Public Safety release the year of death from-the spreadsheet, and maintain its position and continue to withhold the remaining redacted information.

[17] As set out in section 49(1)(b) of ATIPPA, 2015, the head of Department of Justice and Public Safety 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.

[18] Dated at St. John's, in the Province of Newfoundland and Labrador, this 1<sup>st</sup> day of October 2024.



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