



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2024-049

October 29, 2024

### Town of Millertown

**Summary:**

The Town of Millertown received an access request for all information about four properties and their tax arrears auction. The Town produced a number of records but withheld some information, citing sections 28 (local public body confidences), 30 (legal advice) and 40 (disclosure harmful to personal privacy) of the **Access to Information and Protection of Privacy Act, 2015**. The Complainant sought a review of the redactions, asserting the information should not have been withheld. This Office determined that the Town had applied the redactions in accordance with the legislation.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 28(1)(c), 30, and 40.

**Authorities Relied On:** NL OIPC Reports [A-2008-002](#), [A-2008-014](#), [A-2012-006](#), [A-2013-004](#), and [A-2018-022](#).

## BACKGROUND

- [1] The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the Town of Millertown. The request sought all information related to four specific properties and their tax arrears auction.
- [2] The Town of Millertown responded to this request, providing a number of records to the Complainant. However, it withheld some information pursuant to sections 28(1)(c) (local public body confidences), section 30 (legal advice), and section 40 (disclosure harmful to personal privacy). The Complainant then made a complaint to this Office objecting to these redactions.
- [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] The Town of Millertown submitted that in processing this request, it had made its best efforts to release as much information as possible and that information was withheld only in accordance with ATIPPA, 2015. In applying exceptions to redact portions of the records, the Town of Millertown indicated it approached this work in a line-by-line manner, redacting only those portions of the records that aligned with the requirements of the legislation (section 40), or that fell within the description of the discretionary sections of the Act (sections 28, 30).

## COMPLAINANT'S POSITION

- [5] The Complainant sought our review of the Town's decision to withhold information from the responsive records. The Complainant submitted that the information should not be considered privileged and that the redactions were excessive. The Complainant takes the position that the records should be accessible to the public.

## DECISION

[6] The relevant legislative sections are as follows:

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

...

(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.

...

30.(1) The head of a public body may refuse to disclose to an applicant information

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

(b) that would disclose legal opinions provided to a public body by a law officer of the Crown.

(2) The head of a public body shall refuse to disclose to an applicant information that is subject to solicitor and client privilege or litigation privilege of a person other than a public body.

...

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.

### Local Body Confidences – section 28(1)(c)

[7] Limited information was redacted from the records pursuant to section 28(1)(c). This section may be applied at the discretion of a public body in relation to information that would reveal the substance of deliberations of privileged meetings. Municipalities are authorized to hold privileged meetings pursuant to section 213 of the **Municipalities Act, 1999**, which sets out the following:

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.

[8] Municipalities are therefore permitted to hold privileged meetings in accordance with this legislation, and those meetings are not open to the public. When read in relation to ATIPPA, 2015 section 28(1)(c), this gives a public body the right to withhold from disclosure any records that form the “substance of deliberations” at this type of meeting (that is one where the public is excluded).

[9] In order to rely on section 28(1)(c), a public body must not only have the authority to hold a privileged meeting in accordance with an Act, but it must also be able to present evidence that such a meeting was held as a privileged meeting. The Town of Millertown applied this exception to two privileged meetings that were clearly marked as such on the responsive records. The only portion of the information that was withheld within each record is that portion that would reveal the substance of deliberations of the meeting. In Report [A-2018-022](#), this Office determined that “the minutes in question were minutes of a privileged meeting, therefore the Town can rely on section 28(1)(c) of the ATIPPA, 2015 to withhold these minutes as it is authorized by the Municipalities Act.”

[10] Having reviewed the records in full, this Office finds the Town of Millertown did apply this exception in a limited and line-by-line manner, and the information that has been redacted does constitute “the substance of deliberations.” The Town did release to the Complainant other, non-privileged, information, such as the fact that it was a privileged meeting, when it took place, who was present, and other similar information.

#### Legal Advice – section 30

[11] Section 30 sets out both solicitor and client (legal advice) privilege, and litigation privilege. This Office has previously highlighted the necessary elements of a valid claim to privilege in Reports [A-2008-002](#), [A-2008-014](#), [A-2012-006](#) and [A-2013-004](#), as follows:

- i. the document was a communication between a solicitor, acting in his or her capacity, and the client;
- ii. the communication entailed the seeking or giving of legal advice, AND

iii. the communication was intended to be confidential.

[12] The Town of Millertown provided the records over which it had claimed solicitor client privilege or litigation privilege to our Office for our review. Having reviewed the records, the records in question all clearly fall within the description of solicitor and client privileged information and meet the test noted above. Additionally, some portions of the records also meet the description and requirements of litigation privilege. This Office has defined this in our guidance document, [Section 30 – Legal Advice](#), as follows:

If a public body is relying on litigation privilege you must be able to show that:

- i. the dominant purpose for the preparation of the document must be the litigation in question, AND
- ii. litigation must have been in reasonable contemplation at the time of preparation of the document.

[13] The Town of Millertown again did a line-by-line review of these responsive records, and the information it has withheld qualifies for the exception at section 30.

#### Personal Privacy – section 40

[14] Finally, section 40 was applied to redact information that would reveal personal information and be an unreasonable invasion of a third party's personal privacy.

[15] The redactions made pursuant to this section included information such as names and personal contact information (telephone numbers, email, and home addresses), all of which fit the definition of personal information under section 2 of the Act, which section 40 is meant to protect.

[16] The Town considered sections 40(2), (4) and (5) as part of its review of the records, determining the information in question did not fall within the scope of section 40(2) and none of the section 40(5) factors weighing in favour of disclosure were applicable. Additionally, the Town noted that section 40(4)(g)(i) was applicable – that is, the information redacted pursuant to section 40 frequently consisted of a third party's name where it appears with other personal information about the third party, therefore it can be concluded the release of such information would be presumed to be an unreasonable invasion of privacy.

[17] Given the above analysis it is my finding that the redactions made to the responsive records are in keeping with the legislation and are either required or at the discretion of the public body. In the case of the latter, the Town has demonstrated the redacted information falls within these discretionary exceptions to access. I therefore recommend it continue to withhold the material that falls within the mandatory redactions and that it is entitled to continue to withhold the material that falls within the description of the discretionary ones.

## RECOMMENDATIONS

[18] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015), I recommend that the Town of Millertown continue to apply the redactions made pursuant to sections 28(1)(c), 30 and 40 to withhold portions of the responsive records.

[19] As set out in section 49(1)(b) of ATIPPA, 2015, the head of the Town of Millertown 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.

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 29<sup>th</sup> day of October 2024.



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