



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-052

November 27, 2024

City of St. John's

Summary:

The City of St. John's received an access request for information about specific properties the City is purchasing per its 2024 budget. The City informed the Complainant that records responsive to their request were found among the minutes of two Special Meetings of Council and therefore were being withheld, citing sections 28 (local public body confidences), and 35 (disclosure harmful to the financial or economic interests of a public body) of **the Access to Information and Protection of Privacy Act, 2015**. The Complainant sought a review of the application of the redactions, asserting the information should not have been withheld in its entirety. This Office determined that the City had applied the redactions too broadly, recommending release of additional information.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 8, 9, 13, 28(1)(c), and 35(1)(d).

Authorities Relied On: NL OIPC Reports [A-2024-049](#), [A-2021-048](#).

BACKGROUND

- [1] The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the City of St. John's, seeking the following:

Please advise what specific properties the City is purchasing on Goldstone Street and/or Thorburn Road for \$750,000 as per the approved 2024 capital budget.

- [2] The City completed an initial search for responsive records and located minutes for two separate Special Meetings of Council, portions of which were responsive, along with an accompanying decision note. The City determined sections 28(1)(c) and 35(1)(d) applied to these responsive records, providing the Complainant with a final response to their request advising that, "5 pages of Special Meetings of Council records had been withheld in response to your request in accordance with" sections 28 and 35 of the Act.

- [3] The Complainant then made a complaint to this Office seeking a review of the City's application of those exceptions and its decision to withhold the responsive records. During informal resolution, the City's ATIPP Coordinator became aware that the City had just concluded a purchase transaction for one property on Goldstone Street the prior month. As a result, the City provided the Complainant with this information and records related to the purchase.

- [4] The City's decision to withhold all other responsive records remained an issue for the Complainant and 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] The City relied upon section 28(1)(c) in combination with section 38 of the **City of St. John's Act** to withhold portions of the records:

The substance of deliberations of the Special Meeting of Council were withheld as the City of St. John's Act, section 38, below, authorizes the holding of meetings of Council in the absence of the public:

Public meetings

38. Meetings of the council shall be held in public unless a meeting is called as a special or privileged meeting or declared by a vote of the council at a meeting to be a special or privileged meeting, in which case all members of the public present shall leave.

In their submission, the Applicant asks for a review of the response to their access request in which records of the Special Meeting of Council were withheld. The information requested was provided to this office as part of the record of Special Meetings, as made evident by the reporting fields and meeting titles. The Special Meetings are held regularly as privileged and absent of any members of the public. While the City is committed to being open and transparent, we maintain that certain matters must be able to be considered by Council in the absence of the public. Section 28(1)(c) is designed to ensure that elected officials and governing bodies can meet privately when necessary to engage in open, frank discussion and these deliberations should be able to be protected from disclosure.

- [6] Additionally, the City relied upon section 35(1)(d) and submitted the matter was not yet finalized and only one of the property purchases had concluded (for which records were provided to the Complainant). It asserted that providing further records about other portions of the project that were not yet complete would be a premature disclosure of information.

COMPLAINANT'S POSITION

- [7] The Complainant made a submission to this Office arguing in favour of disclosure of further information pursuant to section 9, as follows:

It is respectfully submitted that this information is most definitely in the public interest and outweighs the exceptions relied on by the City of St. John's. It's worthy of noting that the relevant deed was not provided in the initial response records even though it was available. Equally important is the fact that the listing agent for the subject property is [a named City Councilor], who is council lead for finance and housing, and stands to have personal gain from the sale. This conflict of interest is clearly of interest to the public and is a point of contention. Therefore, the attendance records and dates of the Special Meeting of Council should be provided as well as the minutes.

ISSUES

[8] At issue is the application of sections 28(1)(c), 35(1)(d), and whether section 9 is applicable.

DECISION

[9] The relevant portions of ATIPPA, 2015 are as follows:

9. (1) Where the head of a public body may refuse to disclose information to an applicant under a provision listed in subsection (2), that discretionary exception shall not apply where it is clearly demonstrated that the public interest in disclosure of the information outweighs the reason for the exception.

(2) Subsection (1) applies to the following sections:

(a) section 28 (local public body confidences);

...

(f) section 35 (disclosure harmful to the financial or economic interests of a public body);

...

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.

...

35. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

...

(d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;

[10] The records in question total five pages: the responsive portions of the two Special Meetings of Council are contained on one page, with the accompanying “Decision/Direction Note” forming approximately four pages.

Application of Section 28(1)(c)

[11] While this section can be applied at the City’s discretion, it can only do so to withhold that information which forms the “substance of deliberations” of a privileged meeting(s) as this Office has discussed in several reports including, most recently, Report A-2024-049.

[12] In this case, the City has broadly applied section 28(1)(c) to withhold the entirety of the minutes of the two Special Meetings of Council in which material responsive to the Complainant’s request can be found, including items that are clearly not the substance of deliberations such as the administrative information (type of meeting, date, who was present, and similar information), as well as the conflict of interest and recusal of a councilor prior to substantive discussion.

[13] The City argued that the request clearly asks for the answer to a question rather than records, and the answer to that question just happened to be found in the Special Meeting of Council minutes. It likened this matter to that discussed in Report A-2021-048 of this Office. stating:

This file is akin to the matter discussed in Report A-2021-048. In fact, with that request, the applicant actually sought the Special Meeting minutes pertaining to a certain matter, not just an answer to a question. And in response, this office withheld all of the Special Meeting minutes that were responsive to the request as once the information sought was removed (in accordance with s. 28 of the ATIPPA and s. 38 and 41 City of St. John's Act), the remaining information was not responsive to the request and of no value.

Report A-2021-048 stated, at paragraph 12:

[12] Section 8(2) requires a public body to sever information excepted from disclosure when it is reasonable to do so. In this case, the City has withheld the responsive records in their entirety rather than doing a line-by-line review and redacting specific information. Section 28 is an information-level, as opposed to record-level exception that would ordinarily require such a line-by-line review. However, having reviewed the responsive records, it would not be reasonable

to redact the records on a line-by-line basis as the information remaining after such an exercise would be very limited and of no value.

Based on this, the City submitted that:

The same reasoning applies to this request. As written, the applicant asked for a listing of properties on Goldstone Street and/or Thorburn Road. They have been provided with the address of the property that can be disclosed at this time and the publicly available records associated with that transaction. Nothing else in the Special Meeting records is even responsive to the request and should be protected in accordance with section 28 of the ATIPPA, 38 and 41 of the City of St. John's Act, or at the very least considered non-responsive.

[14] The City seems to be claiming that some information in the records is non-responsive and therefore a line-by-line reading is not appropriate and it is not required to provide disclosure. The City identified these records from two privileged meetings and applied section 28(1)(c) of ATIPPA, 2015, which allows a public body to withhold from disclosure any records that form the “substance of deliberations” of a meeting which a local public body is authorized to hold in the absence of the public.

[15] 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 properly held as a privileged meeting. The exception at section 28 only allows a public body to withhold those portions of the records that form the “substance of deliberations,” meaning all other information that falls outside that description ought to be disclosed, which would typically include information such as that it was a privileged meeting, when it took place, who was present and other similar information. As the City has noted, the Complainant did not ask directly for such information in their access request. The Complainant requested to know what properties were being purchased. However, once the City identified the records as responsive to the request, and further identified information in the record subject to an exception to access, the City was bound by section 8(2) to release the remainder of the record. This is especially true where the exception the City is relying on depends on certain procedural practices to be effective. Those parts of the minutes detailing how the meeting was called and who was present are relevant to establishing that it was a privileged meeting thereby allowing other information in the record to be withheld.

[16] Beyond establishing that these were privileged meeting minutes, the City has a duty to assist as well. The Complainant had follow-up questions about the procedural details of the meetings and whether a conflict of interest had been declared at those meetings. In a duty to assist context, the City could and should have acknowledged to the Complainant that it found responsive information in some privileged meeting minutes, and indicated that this information, along with a lot of non-responsive information that formed the substance of deliberations would be withheld, but that the non-substantive information could be provided if desired.

Application of Section 35(1)(d)

[17] This provision is categorical in nature rather than harms-based, which means that so long as a public body can demonstrate that disclosure of information would be a premature disclosure of a proposal or project, the threshold has been met to apply the exception. In this case, most of the information in question (pages two to four of the five pages) falls within the description noted, as the City has only moved forward on purchasing one property and these records discuss the considerations and implications of the project from the preliminary stage. Only the header of the first page of these records falls outside this description and therefore could be released.

[18] Additionally, as the City noted in its submissions to this Office, once it became aware that one sale had been completed, it provided those additional responsive records (in this case, the deed of conveyance) to the Complainant:

When the final response was sent, it was understood that 72 Goldstone Street, along with the others, had not yet been acquired by the City and to disclose the same before an agreement of purchase could be reached with the owners would be premature and harmful to that process. However, once it became known that the 72 Goldstone Street transaction was complete, that information was promptly provided to the Applicant.

Applicability of Section 9

[19] Finally, section 9, known as the public interest over-ride, was briefly referenced by the Complainant in their submissions. For section 9 to apply (which would over-ride an exception used by the public body to withhold information), it would have to be clearly demonstrated

that the public interest in disclosure of the information outweighs the reason for the exception. The Complainant has not provided substantive arguments in relation to section 9, and I therefore do not find a compelling argument in favour of its applicability.

[20] It did give me some pause, however, when the City was asked for its response to the Complainant's comments about section 9. The City declined to offer further argument, noting anyone who alleges a conflict of interest should, "pursue a complaint using the proper channels." However, it is difficult to see how the City could expect anyone to be sufficiently informed to draw such conclusions and take such steps when it had withheld from disclosure the attendance at the privileged meetings.

RECOMMENDATIONS

[21] Under the authority of section 47 of the Access to Information and Protection of Privacy Act, 2015, I recommend that the City of St. John's:

1. disclose to the Complainant the initial and concluding lines of the Special Meeting minutes (including details of attendance, resolution of potential conflict of interest, and any decisions) and the header of the Decision Note, as highlighted on the copy of the responsive records accompanying this Report; and
2. continue to withhold those remaining portions of the responsive records previously redacted under sections 28(1)(c) and 35(1)(d).

[22] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the City of St. John's 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.

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



Jacqueline Lake Kavanagh
Interim Information and Privacy Commissioner
Newfoundland and Labrador