



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-057

December 17, 2024

Department of Fisheries, Forestry and Agriculture

Summary:

The Complainant made an access to information request to the Department of Fisheries, Forestry and Agriculture for information about several land grant applications. The Department provided a large volume of responsive records but withheld a portion pursuant to sections 29(1)(a) (policy advice or recommendations); 30 (legal advice), 31 (disclosure harmful to law enforcement), and 40 (disclosure harmful to personal privacy) of the **Access to Information and Protection of Privacy Act, 2015**. After reviewing the Department's application of these exceptions to access, it was determined the public body had met its burden of establishing the exceptions at sections 29(1)(a), 30, and 40 applied and the Commissioner recommended that the Department continue to withhold information redacted pursuant to those exceptions. However, the Department failed to meet its burden of proving the application of section 31(1)(l) and the Commissioner therefore recommended it release the portion of the records redacted pursuant to that section.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 29(1)(a), 30, 31(1)(l), and 40.

Authorities Relied On: NL OIPC Reports [A-2008-002](#), [A-2008-014](#), [A-2012-006](#) and [A-2013-004](#), [A-2021-033](#), and [A-2024-039](#).

BACKGROUND

- [1] The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) to the Department of Fisheries, Forestry and Agriculture, seeking the following:

I am requesting any and all documents / records, or otherwise related, to the Land Grant Applications made to this Department and are currently under consideration or have been recently awarded Crown Title (in the last seven years) by the Crown Lands Office and the Minister of Fisheries, Forestry and Agriculture from the Town of Millertown. This would include any records or documents on meeting scheduled or held by any person working at the Fisheries, Forestry and Agriculture Department and the Representative(s) of the Town of Millertown or any records of discussion having taken place between any of these parties to discuss these Land Grant Applications. These would include any records related to the following Land Grant Application numbers: #157088; 158396; 160392; 159576; 157292; 156932; 156913; 144411; 152501

- [2] The Department provided its final response to the Complainant that included disclosure of nearly 700 pages of responsive records, but redacted portions (including 46 pages in full) pursuant to sections 29, 30, 31, and 40. The Complainant took issue with this final response and filed a complaint with this Office seeking our review in relation to the number of redactions made by the Department, and the readability of the final responsive records package received.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY’S POSITION

- [4] The Department submitted that it had applied the redactions in accordance with the legislation and that, “only the necessary redactions were applied,” such that the amount of information redacted was limited as much as possible and the Complainant was provided with as much information as it could.
- [5] With respect to the Complainant’s concerns regarding the readability of the response package, the Department outlined the steps it had taken in compiling the records, noted the

varying types and volume of records involved and the complicating matter that the Complainant was already in possession of some responsive records due to previous access requests.

COMPLAINANT'S POSITION

[6] The Complainant submitted that “this is without a doubt the most Heavily Redacted set of documents that I have ever received from any of the Hundreds of ATIPP requests I have made over the years.”

[7] In addition to raising concerns about the decision to withhold information, the Complainant also noted of the final response:

The whole set of documents that have been released here are basically unreadable, to the point where no one could follow what was being written about at the time it was written, with any logical flow of understanding - due to the heavy redactions/documents removed altogether.

ISSUES

[8] At issue is the Department's application of sections 29, 30, 31, and 40; as well as whether it upheld its section 13 duty to assist.

DECISION

[9] The relevant sections of the Act are as follows:

13. (1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

...

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) 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.

...

- 31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure 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 communications 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.

All of these exceptions are information-level exceptions to access, meaning a public body is required to conduct a line-by-line review of any responsive records to determine what information, if any, may be withheld from an applicant. Section 8 of the Act provides that an applicant has a right of access to the remainder of a record once information has been severed pursuant to an exception to access.

Section 29 – Policy Advice or Recommendations

[10] Section 29(1)(a) allows a public body to withhold portions of records that include policy advice or recommendations. Determining the correct application of this section requires consideration of its purpose, which this Office interpreted in Report [A-2021-033](#):

This exception is intended to provide public servants with a “safe space” in which to hold discussions or debates around courses of action and to provide advice or recommendations about policy or procedural matters, without being concerned that their views and opinions will be made public. The extensive jurisprudence on this topic, including court decisions, confirms that the exception covers drafts of documents and the discussions around them.

[11] This Office also considered the application of section 29(1)(a) in Report [A-2024-039](#):

Section 29(1)(a) addresses the need for public bodies to withhold records that document internal discussions and debates that are needed to develop and implement policies and plans.

[12] We have reviewed the Department’s application of section 29 and find that it has been appropriate. Further, throughout the response package, the Department has demonstrated that it had conducted a line-by-line review and has only redacted information to which the exception applies.

[13]. However, throughout the Department’s response there are several documents which have been redacted in full, covering 46 full pages. These records are responses from other public bodies to referrals from Crown Lands, containing comments from those public bodies about whether they have any objections to the various proposals along with their recommendations. While the Department has in effect redacted entire records, we agree that the information that has been withheld still qualifies as policy advice or recommendations given to constitute internal discussions and debates aimed at implementing policies and plans.

[14] Sections 30(1)(a) and (b) allow a public body to withhold legal advice, to protect both solicitor and client 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:

- the document was a communication between a solicitor, acting in his or her capacity, and the client;
- the communication entailed the seeking or giving of legal advice, and
- the communication was intended to be confidential.

[15] The Department provided the records over which it has 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 requirements for litigation privilege and if a public body is relying on litigation privilege it must be able to show that:

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

[16] Having reviewed the records provided by the Department, we are satisfied that the information redacted pursuant to section 30 has been properly withheld.

[17] Section 31(1)(l) allows a public body to withhold information that reveals the security arrangements for both physical and digital property. This Office has supported the use the section 31(1)(l) as it relates to digital file pathways on computers and servers that could potentially undermine a system’s cyber security if disclosed. This is not the case here. The redactions are employed sparingly throughout the responsive records but have been used to redact the name of the applications management system used by the Department, as well as the name of its records management system and some record numbers associated with that system. There does not appear to be any harm in releasing the names of either system and in fact both systems referenced are public knowledge and have been referenced in various publicly available reports. With respect to record numbers, those that have been withheld are in some cases referenced elsewhere in the responsive records on the document itself and are routinely attached to correspondence and other documents released by the Department and the Government of Newfoundland and Labrador generally. While this exception does not have a harms based test – that is, the Department is not required to demonstrate that harm would occur from the disclosure of this information, the provision does require that the information be related to “arrangements for the security of . . . a system” and we do not find that the Department has met its burden of proof in establishing that this section applies to this information.

[18] Section 40 is a mandatory exception to access to protect the personal privacy of third party individuals. It has been used throughout to withhold information that would reveal personal information and be an unreasonable invasion of a third party's personal privacy, such as private email and cell phone numbers of named individuals, the identities of third parties either on their own or in combination with additional personal information about them, signatures, and personal employee information such as when someone is working from home, etc., all of which fit the definition of personal information under section 2 of the Act, which section 40 is meant to protect.

[19] The information at issue does not fall within the scope of section 40(2) and none of the section 40(5) factors weighing in favour of disclosure are applicable. Additionally, section 40(4)(g)(i) is applicable in most instances – that is, the information redacted pursuant to section 40 frequently consists 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.

Section 13 – Duty to Assist

[20] The Act does not provide a great deal of direction on how public bodies are required to provide records to applicants. Section 20 (provision of information) sets out that a public body should provide copies of records where it is possible to produce them or allow the applicant to examine the record in person. The section also addresses how electronic records are to be produced. However, none of that is particularly relevant here as the Complainant's objection is to how the records have been organized, which may be more appropriate to assess from a duty to assist perspective.

[21]. With respect to the organization and readability of the final responsive package, given the information requested and the volume of responsive records provided by the Department, as well as their past access requests, I am satisfied the Department has compiled its response in accordance with the legislation and to the best of its abilities to ensure as logical an organization of records as possible.

[22] The Department submitted that it followed its usual process in handling this request, which entails converting responsive documents to portable document format (".PDF") which were dated to follow chronologically. Email files were combined in chronological order, and the application files were combined by application number. This seems reasonable given the wording of the request and the task of compiling different types of records. While the Department acknowledged this resulted in a "mostly chronological flow that eventually was disrupted part way through the final response package," I am satisfied with how the Department reviewed and responded to the request and moreover am not certain what other method could have achieved any more logical or organized disclosure.

[23] With respect to the removal of documents, the Department has demonstrated to this Office that there were attachments that were previously provided to the Complainant in earlier access requests and therefore the Act does not require them to provide them again. We do request that in future access to information requests where the Department intends to disregard a portion of a request on the grounds that the records were previously provided to an applicant that a disregard be submitted to this Office under section 21, advising that part of the request is for information already provided to the applicant (section 21(1)(b)). Given the volume of records involved and the lengthy consultation process, it is reasonable that the Department would remove these both to expedite the response process, and cut down on the volume of records being provided to the Complainant. Additionally, where such attachments were removed, a note was added to indicate this along with which of the Complainant's previous ATIPP requests the removed documents were provided in. I find that this not only demonstrates their effective deployment of their duty to assist, but goes above and beyond to ensure the Complainant could easily find where those documents could be found.

RECOMMENDATIONS

[24]. Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** (the "Act"), I recommend that the Department of Fisheries, Forestry and Agriculture disclose the information redacted pursuant to section 31(1)(l).

[25] Under the authority of section 47 of the Act, I recommend that the Department of Fisheries, Forestry and Agriculture continue to withhold that information withheld pursuant to sections 29(1)(a), 30 and 40.

[26] As set out in section 49(1)(b) of the Act, the head of the Department of Fisheries, Forestry and Agriculture 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 17th day of December 2024.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador