



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-058

December 18, 2024

City of St. John's

Summary:

The City of St. John's received an access request for communications regarding Metrobus transportation in the area of Longs Hill and Harvey Road, dating back to January 1, 2020. The City produced a number of records but withheld some information, citing sections 29 (policy advice and recommendations), 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 application of the redactions, asserting more information should have been disclosed. This Office determined that the City 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 29(1)(a) and 40.

Authorities Relied On: NL OIPC Reports [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 City of St. John’s, seeking the following:

Part 1: Any communications between City staff, City councilors and/or Metrobus staff regarding Metrobus transportation in the area of Longs Hill and Harvey Road. Please go back to January 1, 2020.

Part 2: If possible, any communication about this area that is internal to Metrobus only as well, such as driver complaints, any encounters with riders, etc.

[2] The City, St. John’s Transportation Commission (known as Metrobus), and St. John’s Sports and Entertainment are all separate public bodies that share the same ATIPP coordinators to respond to requests for information. While this request involves Metrobus information, it was addressed to the City on its access request form and, because of this, along with the specific wording of the request seeking communications, “between City staff, City councilors”, the City determined it would be handled as a City of St. John’s access request and the City is the public body which responded to both the request and the subsequent complaint. The City provided partial disclosure of the responsive records, citing sections 29(1)(a) and 40(1) to redact and withhold some information.

[3] Dissatisfied with the City’s decision to withhold information, the Complainant made a complaint to this Office seeking a review of the City’s redactions.

[4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY’S POSITION

[5] The City made submissions to this Office stating that after careful review, it severed some information in accordance with sections 29 and 40 of the Act, providing the Complainant with as much information as possible. More specifically, it noted that line-by-line redactions were conducted to withhold communications between City staff and officials in which they were

weighing options or providing advice pursuant to section 29, as well as the names of third parties, personal contact information, and similar personal information pursuant to section 40.

[6] In responding to the particulars of this complaint, the City noted:

In their submission, the Applicant suggests that the information provided in the response sent by this office is incomplete and *most of the correspondence is completely redacted*. This office conducted a comprehensive search of City of St. John's staff email accounts using the keywords "metrobus", "longs/long's", and "Harvey" and the date range included in the request above. Metrobus staff were also asked to provide all correspondence in their custody responsive to the request. All responsive records were diligently reviewed line-by-line, and this office disclosed a total of 125 pages to the Applicant.

Much of the information redacted by this office pertains to discussions had between members of the St. John's Transportation Commission. As is evident within the responsive records, the matter at hand is complex and the opinions voiced are of a sensitive nature. Officials must be provided the opportunity to deliberate over such matters openly without concern that their views and opinions will be made public.

[7] The City went on to note that it had exercised its discretion in applying section 29(1)(a) to ensure space for open and frank conversation was sustained, and that the information withheld was limited to "clear instances of advice, discussion of options, disagreements, and suggested alternatives."

COMPLAINANT'S POSITION

[8] The Complainant submitted that the St. John's Transportation Commission, while a separate entity from the City of St. John's, is funded partially by the City, and that two councilors (formerly three) sit on its board and are voting members. The Complainant noted the Commission is responsible for overseeing the only public transit system in St. John's and, in their complaint to this Office, sought review of the application of redactions by the City, stating they believed the records received were "heavily redacted."

[9] While the Complainant acknowledged they understood the need to redact private email addresses, they went on to state they “believe any emails sent to @metrobus.com regarding [Long’s Hill Stop] should be able to be made available . . . unredacted.”

[10] More specifically, the Complainant noted they “did not get any information/discussion of the removal of the stop,” and is seeking disclosure of all emails sent to and from @metrobus.com as well as all emails sent to @stjohns.ca “unredacted (aside from personally identifying information).”

ISSUES

[11] At issue in this report is the application of sections 29(1)(a), and 40(1).

DECISION

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

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.

...

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

...

(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.

[13] After reviewing the City's response along with the responsive records package, I am in agreement with its application of these exceptions to access and find they are in accordance with the Act.

[14] Section 29(1)(a) has been applied to withhold portions of records that include policy, advice, and 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.

[15] 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.

[16] In this case, what has been redacted are discussions and debates between members of the St. John's Transportation Commission around the course of action to take in relation to the inner workings of the Commission and the removal of a bus route and shelter. Advice and recommendations are being provided back and forth about policy and procedural matters

related to the Commission, as this section intended to allow. The City very clearly conducted a line-by-line assessment in redacting this information, and I am satisfied it has done so as minimally as possible, only redacting those portions of the records that fall within the above-noted exception.

[17] Contrary to the Complainant's suggestion that a lot of the information has been withheld, section 40 is employed sparingly to withhold only those portions of records that would reveal personal information and would be an unreasonable invasion of a third party's personal privacy if disclosed, 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, and signatures, all of which fit the definition of personal information under section 2 of the Act, which section 40 is meant to protect. The Complainant has sought copies of emails sent to Metrobus and has been provided these records, and only personally-identifying information has been redacted.

[18] The information at issue does not fall within the scope of section 40(2), which would deem the disclosure to not be an unreasonable invasion of privacy. Additionally, section 40(4)(g)(i) specifically applies in most instances as the information frequently consists of a third party's name where it appears with other personal information about the third party, therefore there is a presumption that disclosure would be an unreasonable invasion of privacy. None of the section 40(5) factors weighing in favour of disclosure would apply to rebut that presumption.

[19] 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 City has demonstrated the redacted information falls within the discretionary exception 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 one.

RECOMMENDATIONS

- [20] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** (the “Act”), I recommend that the City of St. John’s continue to withhold the information it has severed from the responsive records pursuant to sections 29(1)(a) and 40.
- [21] As set out in section 49(1)(b) of the Act, 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.
- [22] Dated at St. John’s, in the Province of Newfoundland and Labrador, this 18th day of December 2024.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador