



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**Report A-2025-009**

**February 28, 2025**

**Town of St. George's**

**Summary:**

The Complainant made an access request to the Town of St. George's requesting a letter referenced in the minutes of a council meeting. The Town responded to the request, refusing access on the grounds the contents of the letter were confidential. The Town did not cite an exception to access in its response. In a follow up to this Office's investigation, the Town advised that it was withholding the letter under section 39 (disclosure harmful to business interests of a third party). The Commissioner found the Town had not met the three-part test to withhold the information under section 39 and recommended the letter be disclosed to the Complainant.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 17 and 39.

**Authorities Relied On:** [OIPC Guidance: Providing Reasons for Refusal of Access](#); [OIPC Guidance: Business Interests of a Third Party \(Section 39\)](#).

## BACKGROUND

- [1] The Complainant made an access to information request to the Town of St. George's under the **Access to Information and Protection of Privacy Act, 2015** (the "Act"), seeking a letter referenced at a council meeting about a request by a business to write-off \$52,225 in taxes.
- [2] The Town responded to the request, advising the Complainant that the Town's auditor has advised it to treat the letter as confidential and not release it. The Town did not cite what exception to access it was relying on to deny access.
- [3] The Complainant made an access complaint to this Office, seeking a review of the Town's decision to withhold the letter.
- [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 Town advised the Complainant, and later this Office, that it needs to withhold the letter due to the confidential nature of ongoing negotiations with the business and disclosure of the letter could upset those negotiations and open the Town to potential litigation. The Town advised that in taking this position it was acting on the advice of its auditor. As with its response to the Complainant, the Town did not indicate what exception to access under the Act it was relying on for this position. Later, the Town advised this Office that it was relying on section 39 (disclosure harmful to the business interests of a third party).

## ISSUES

- [6] At issue for this Report is whether the Town met its obligations under section 17, and whether the Town can apply section 39 to continue to withhold the letter.

## DECISION

### Section 17

[7] Section 8 of the Act states that a person who makes an access to information request has a right of access to a record unless the Act provides an exception to access. That is, there is a presumption that any record in the custody or control of a public body can be disclosed unless the public body can identify an exception under the Act which supports the denial of access. The practical effect of section 8 is that any denial of access must be grounded in a specific exception to access found in the Act and a public body cannot deny access without referencing the exception on which it is relying.

[8] Further, section 17 of the Act requires a public body to identify to an applicant the exception to access it is relying on if it is denying access:

17.(1) In a final response to a request for access to a record, the head of a public body shall inform the applicant in writing

- (a) whether access to the record or part of the record is granted or refused;
- (b) if access to the record or part of the record is granted, where, when and how access will be given; and
- (c) if access to the record or part of the record is refused,
  - (i) the reasons for the refusal and the provision of this Act on which the refusal is based, and
  - (ii) that the applicant may file a complaint with the commissioner under section 42 or appeal directly to the Trial Division under section 52, and advise the applicant of the applicable time limits and how to file a complaint or pursue an appeal.

[9] In addition to citing the exception to access, section 17 also requires a public body to provide reasons for denying access. While the Town's response to the access request did provide reasons for withholding the requested letter, the Town did not identify which provisions of the Act it was applying to withhold the record. Further, the Town, while denying access, did not advise the Complainant of their right to file a complaint with this Office or an appeal to the Supreme Court of Newfoundland and Labrador.

## Section 39

[10] When notified of the complaint and this Office's investigation, the Town initially did not identify which provisions of the Act it had applied to withhold the letter, instead explaining its reliance on advice from its auditor to protect the confidentiality of the letter and the ongoing negotiations with the business. After several requests by this Office for submissions from the Town, the Town identified section 39 as the exception to access on which it was relying.

[11] Section 39 states:

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

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party;

(b) that is supplied, implicitly or explicitly, in confidence; and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return, gathered for the purpose of determining tax liability or collecting a tax, or royalty information submitted on royalty returns, except where that information is non-identifying aggregate royalty information.

[12] Section 39 is a mandatory exception to the right of access under the Act and consists of a three-part test. All three parts must be satisfied and, in this case where it is being asserted by the Town, the public body bears the burden of proof pursuant to section 43(3). Failure to meet any part of the test will result in disclosure of the requested records.

[13] The first part of the test is section 39(1)(a), whether disclosure of the information in the letter would reveal trade secrets, commercial, financial, labour relations, scientific or technical information of the third party. The letter is a brief request by a third party business to adjust its taxes owing to the Town. It also provides some information about the status of the business' operations. It is not apparent that even the first part of the test has been met, but we will consider the further parts nonetheless.

[14] The second part of the test, at section 39(1)(b), requires the information to have been supplied by the third party explicitly or implicitly in confidence. While the letter was authored by the third party business and therefore can be said to have been "supplied" by it, there is no indication that the author of the letter had sent it to the Town in any expectation of confidentiality. Without evidence that the letter was supplied in confidence, we must conclude that the second part of the test has not been met.

[15] Finally, the third part of the test, at section 39(1)(c) requires evidence of the harm that could result from the disclosure of the information, that harm being:

- Significant harm to the competitive or negotiating position of the third party,
- Similar information not being supplied to the public body,
- Undue financial loss or gain to any person, or
- Revelation of information supplied to, or the report of a person appointed to resolve a labour relations dispute.

[16] The Town made several references to potential harm to ongoing negotiations, but it never explained how those negotiations could be harmed. As the negotiations appear to be between the Town and the third party business, and the Town already has the letter in its custody or control, it is not clear how the third party's negotiating position vis-à-vis the Town could be harmed by public disclosure. Further, the matters do not relate to a labour dispute; it appears unlikely that public disclosure would dissuade the third party or other businesses from

requesting reductions in their taxes in the future; and no evidence has been supplied as to financial harm to the third party, the Town, or anyone else.

[17] Having reviewed the letter and the Town's submissions, we conclude that the Town has not met the three-part test to withhold the letter under section 39.

## RECOMMENDATIONS

[18] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend the Town of St. George's:

1. Disclose to the Complainant the requested letter from the third party business, withholding only the personal name of the author under section 40, and
2. Review its access to information policies and procedures and, in consultation with the ATIPP Office, develop appropriate policies and procedures for responding to access requests.

[19] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, the head of the Town of St. George'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.

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 28<sup>th</sup> day of February 2025.



Kerry Hatfield  
Information and Privacy Commissioner  
Newfoundland and Labrador