



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-016

March 24, 2025

City of St. John's

Summary:

The Complainant requested from the City of St. John's access to records about a plan to expropriate a property. The City provided responsive records, withholding records from a Special Meeting in full under section 28 (local public body confidences) of the **Access to Information and Protection of Privacy Act, 2015** as well withholding other information under provisions of the **City of St. John's Act**. The Complainant argued that the initial decision to expropriate the property was publicly discussed, therefore, the information to reverse that decision should also be publicly available. This Office determined that some information fell within the exception, however it was also determined that the City applied the redactions too broadly and recommends release of additional information.

Statutes Cited:

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

[City of St. John's Act, RSNL 1990, c. C-17](#), sections 38, 40, and 41.

Authorities Relied On: NL OIPC Reports [A-2007-018](#), [A-2021-048](#), [A-2024-049](#) and [A-2024-052](#). [BC Order No. 03-09](#).

BACKGROUND

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

- 2017 memo from staff to Council recommending a plan to expropriate [named property] be abandoned.
- 2016-2017 correspondence between [two named employees of the City about the named property].
- 2016-2017 correspondence between [two named employees of the City about the named property].
- Any and all information regarding the 2016 - 2017 plan to expropriate [named property].
- Any and all information regarding the 2017 plan to abandon the expropriation of [named property].

[2] The City responded by providing partial access to the records. The Complainant proceed to file a complaint with this Office. At issue in the complaint is the City's decision to withhold approximately 25 pages in full under section 28 (local public body confidences) of the Act as well as sections 40 and 41 of the **City of St. John's Act**.

[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 City maintains that it appropriately withheld records under section 28(1)(c) of the Act, which permits local public bodies to refuse disclosure of information that would reveal the substance of deliberations from a privileged Council meeting. Citing sections 38, 40, and 41(1) of the **City of St. John's Act**, the City maintains it had the legal authority to hold the July 24, 2017, Special Meeting in private, as such meetings are permitted for discussions involving legal, financial, or personnel matters. It further contends that the meeting was properly conducted in accordance with the law and that releasing the records, including the minutes and a July 19, 2017 Decision/Direction Note, would expose confidential deliberations, making them exempt from disclosure.

COMPLAINANT'S POSITION

- [5] The Complainant asserts that the City improperly redacted and withheld records related to the decision to abandon the expropriation of the property. Specifically, the Decision/Direction Note presented at the private council meeting on July 24, 2017, which recommended abandoning the expropriation and the minutes of that meeting where council voted on the decision were withheld in full. They argue that since the initial decision to expropriate the property was publicly discussed in a televised meeting on September 26, 2016, there is no valid reason to withhold the memo that recommended reversing that decision.

ISSUES

- [6] At issue for this Report is whether the City properly applied section 28 to withhold access to the July 24, 2017, Special Meeting Minutes and the Decision/Direction Note presented at that meeting.

DECISION

- [7] The City maintains that it properly redacted and withheld records under section 28(1)(c) of ATIPPA, 2015, which allows local public bodies to refuse disclosure of information that would reveal the substance of deliberations from a special (privileged) meeting of Council. The City applied a three-part test modeled after British Columbia's privacy framework (adopted by our Office in Report [A-2007-018](#)), to justify withholding records related to the July 24, 2017 Special Meeting of Council, where the decision to abandon the expropriation of the property was discussed. The British Columbia Information and Privacy Commissioner in Order No. 03-09 discussed section 12(3)(b) of British Columbia's **Freedom of Information and Protection of Privacy Act**, which has wording almost identical to section 28(1)(c) of the Act. The Commissioner stated at paragraphs 10 to 11:

[10] 3.2 Application of s. 12(3)(b) – The next issue is whether the City is authorized under s. 12(3)(b) of the Act to withhold portions of the disputed records. That section reads:

12(3) The head of a local public body may refuse to disclose to an applicant information that would reveal

...

(b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

[11] Section 12(3)(b) is a discretionary exception to disclosure. The application of section 12(3)(b) must meet the criteria outlined by the Commissioner in several previous orders. See, for example, Order No.326-1999, [1999] B.C.I.P.C.D. No. 39 and Order 02-22, [2002] B.C.I.P.C.D. No. 22. The criteria are as follows:

1. The local public body must establish that it has legal authority to meet in camera;
2. The local public body must establish that an authorized in camera meetings was, in fact, properly held; and
3. The local public body must establish that disclosure of the disputed records or information would reveal the substance of deliberations of the meeting.

[8] The first criteria that the City must establish is that it has legal authority to meet in camera.

The following sections of the **City of St. John's Act** are relevant:

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.

40. Special or privileged meetings of the council may be called at the times that the mayor may consider necessary, or on the written request of 3 members of the council.

[9] The City asserts that it had the legal authority to hold the special meeting in private. The **City of St. John's Act**, specifically sections 38 and 40, grants Council the ability to hold special or privileged meetings in the absence of the public when necessary. We find that the first criteria has been met.

[10] The second criteria that the City must establish is that an authorized in camera meeting was, in fact, properly held. The City submits the meeting was properly held in accordance with its governing statute. While the City maintains they are committed to openness and transparency, certain discussions, such as those involving legal advice, budgeting, or personnel issues, must be conducted in private. The July 24, 2017 Special Meeting was convened in the absence of the public for this reason, and the City believes it was necessary to ensure that Council members could engage in frank and candid discussions regarding the expropriation. The City advises that it has a standing privileged special meeting each week that is separate from the bi-weekly regular meetings and has always been the case. These meetings are held in the absence of the public; organized and identified as special meetings; and the agendas and minutes are stored separately from the regular minutes. While there is no motion during the special meeting minutes calling a privileged meeting, given the nature of the standing privileged special meeting along with the meeting materials clearly labeled as such, we find that the City did in fact properly hold a special or privileged meeting as contemplated by sections 38 and 40 of the **City of St. John's Act** and that the second criteria has been met.

[11] Finally, for the third criteria, the City must establish that disclosure of the disputed records or information would reveal the substance of deliberations of the meeting.

[12] The City contends that disclosing the records would reveal the substance of deliberations from the meeting, which is explicitly protected under section 28(1)(c) of the Act. The Minutes and the Decision/Direction Note dated July 19, 2017 were withheld on this basis, as they contain the background information and recommendations that informed Council's decision-making process. The City emphasizes that these records are integral to the deliberations of the meeting and are therefore protected from disclosure. Furthermore, section 41(1) of the **City of St. John's Act** explicitly states that the minutes of such meetings are protected from public access, reinforcing the City's position that these records can be withheld.

[13] The City also cites Report [A-2021-048](#). The previous approach accepted by this Office outlined in that report allowed for properly held special meeting minutes to be withheld as they are the record of the substance of deliberations. In that case, the remaining parts of the

record, such as other sections not relevant to the request and details like attendance, were deemed to be of little value to the request and this Office determined that the minutes may continue to be withheld in full.

[14] In reviewing the pages withheld under section 28, most of the information does fall under this exception. This is a discretionary exception, however, as it was discussed in recent Reports [A-2024-049](#) and [A-2024-052](#) , it can only be applied to information that would reveal the substance of deliberations of privileged meetings. In this case, the City has broadly applied section 28(1)(c) to withhold the entirety of the agenda, minutes and attachments of the July 24, 2017 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 information about the type of meeting, date, who was present, and similar information. There are other items from this same meeting that would be unresponsive to the Complainant's access request, but the Complainant is only seeking the information redacted under section 28 from the July 24, 2017 Minutes and Decision/Direction Note that is directly responsive to his request.

[15] As stated in [A-2024-052](#), 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 and thereby allowing other information in the record to be withheld.

[16] The Complainant argues that because the initial decision to expropriate the property was publicly discussed in a televised City Council meeting on September 26, 2016, the subsequent decision to abandon the expropriation should have been made in an equally transparent manner. The Complainant asserts that withholding the Special Meeting minutes and the Decision/Direction Note from that meeting prevents public oversight of how and why Council reversed its earlier stance.

[17] The September 16, 2016 meeting was a regular public meeting where Council openly debated and voted on the proposed expropriation. In contrast, the July 24, 2017 meeting was a Special (privileged) Meeting, held in accordance with sections 38 and 40 of the **City of St. John's Act**, which allow Council to meet privately when discussing matters such as legal, financial, or personnel issues. A public discussion on a topic does not automatically mean that all subsequent discussions must also be public. The nature of discussions can change over time, requiring different levels of confidentiality based on the context, legal considerations, and the type of meeting being held. The City was within its legal authority to conduct this meeting privately, as not all discussions on the same topic must follow the same format—especially when they involve new considerations that require confidentiality. The City does maintain the discretion to withhold the substance of deliberations of this Special Meeting, however, as discussed above, the non-substantive portions ought to have been disclosed.

RECOMMENDATIONS

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

1. Disclose to the Complainant information previously withheld under section 28(1)(c) as shown in a highlighted copy of the responsive records accompanying this Report, and
2. Continue to withhold the remaining portions of the Minutes and Decision Note responsive records previously redacted under section 28(1)(c).

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

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 24th day of March 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador