



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-021

May 5, 2025

Town of Torbay

Summary:

The Complainant made an access request to the Town of Torbay for records related to Code of Conduct complaints or investigations involving the Mayor or members of Council between September 2022 and December 2024. The Town withheld the responsive records citing several provisions including sections 29(1)(a) (policy advice or recommendations), 33(2) (information from a workplace investigation), 35(1)(g) (disclosure harmful to the financial or economic interests of a public body), and 40(1) (disclosure harmful to personal privacy) of the Access to Information and Protection of Privacy Act, 2015. On review the Commissioner concluded that sections 33(2) and 35(1)(g) were not applicable, but section 29(1)(a) and 40 applied to some of the information in the records. The Commissioner therefore recommended that the Town continue to withhold some information under sections 29(1)(a) and section 40 and disclose the remainder.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 8(2), 29(1)(a), 33, 35(1)(g), and 40(1).

[Municipal Conduct Act](#), SNL 2021, c M-20.01.

Authorities Relied On: NL OIPC Reports [A-2025-019](#), [A-2024-057](#), [A-2024-054](#), [A-2023-049](#), [A-2023-034](#), and [A-2023-012](#).

[Kirby v. Chaulk](#), 2021 NLSC 86.

BACKGROUND

[1] The Complainant made an access to information request to the Town of Torbay under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”), seeking the following:

Records and communications - digital, paper and/or other - related to any code of conduct complaints, or investigations, into any and all members of council, including the mayor, from September 1, 2022, through December 31, 2024, inclusive.

[2] The Town provided a final response to the Complainant setting out its refusal to disclose two reports which form the responsive records, citing a number of sections of the Act, including sections 29(1)(a) and (b), 33(2), 35(1)(g), 40(1), (3), (4)(c), and (5)(a), (f) and (h). The Complainant then made a complaint to this Office seeking our review of the Town’s application of redactions.

[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] In its initial submission to this Office, the Town failed to provide an unredacted copy of the records and only provided a copy showing redactions pursuant to section 40. The Town’s submissions only provided limited arguments in support of the application of section 40 and other exceptions to access:

- Section 29(1)(a) and (b): With respect to these sections the Town indicated the responsive records included “privileged and confidential documentation and correspondence of Council and staff,” and that it “would be harmful to release information pertinent to any code of conduct complaint or investigation.”
- Section 33(2): With respect to this section, the Town indicated the responsive records “would be detrimental to release . . . as . . . information of any prior investigation will have a negative impact as our goal is to find facts that can lead to corrective actions, not to find fault.”
- Section 35(1)(g): With respect to this section the Town referenced staffing changes and new hires, noting “the Chief Administrative Officer, feels that at this time it is harmful to release any information pertaining to

investigations,” as “Council does not want any perception that there may be dysfunction in the public body in any way to have adverse effects and does not wish to avert economic, business or residential growth in the community.” The Town also raised concerns regarding the mental health and wellbeing of Members of Council, stating “there is confidential documentation and correspondence as it relates to Council Members and human resources as it pertains to investigations, which could be harmful to the mental health of Council with the release of this sensitive information.”

- Section 40(1): With respect to this section, the Town indicated “Council Members and staff have provided documentation and correspondence in a confidential matter as it pertains to the conduct of council,” and noted disclosure of such information, “can have mental health implications and can be damaging to an individual’s reputation.”

[5] Following multiple requests from this Office, the Town finally provided an unredacted copy of the records, along with one indicating its application of sections 29(1)(a), 35(1)(g) and 40(1). The Town also withdrew its application of section 29(1)(b) and took the position that “first and foremost . . . all of the responsive records to this request should be withheld as per the Town’s mandatory obligation to refuse to disclose all relevant information created or gathered for the purpose of a workplace investigation,” offering the following additional arguments in support of the application of section 33(2):

In applying this exception, one must first consider the definition of harassment at paragraph 33(1)(a). This is a broad definition and is meant to capture a range of activity that is unwelcome.

While sub-section 33(2) is clearly mandatory, and clearly includes all relevant information, it is important to look to the definition of “workplace investigation.” At paragraph 33(1)(C) a workplace investigation is an investigation that is related to one of three distinct scenarios: 1) the conduct of an employee in the workplace; 2) harassment; or 3) interactions between employees or between employees and members of the public: either of which may result in corrective action. The use of the word “or” in this paragraph indicates that either of the situations listed in sub-paragraphs (i) to (iii) would engage the definition of workplace investigation. In other words, each situation stands alone. I would also note the use of the word “may,” indicating that actual corrective action is not necessary to engage the section 33 exemption, only the possibility of such action.

I would also note here the use of the term “employee.” In the municipal setting, there has been some debate whether councillors are included in the definition of employee, as set out in section 2 of the legislation. While the meaning of this term has not been clearly identified in the context of a municipal council, the Town would argue that in any allegation of harassment,

the position of the parties involved should be irrelevant. There are two reasons in support of this argument. First, reference to members of the public in sub-paragraph 33(1)(C)(iii) indicates the involvement of non-employees would engage this exception. Second, the reference to “harassment” at sub-paragraph 33(1)(C)(ii) stands alone and does not require the parties to be an employee. While sub-paragraphs 33(1)(C)(i) and 33(1)(C)(iii) specifically refer to employees, sub-paragraph 33(1)(C)(ii) does not, clearly indicating that any investigation involving harassment is considered a workplace investigation for the purposes of section 33, regardless of the position of the parties within the public body.

Based on all of the above, the Town is of the opinion that both investigative reports are workplace investigations as defined by the legislation and, as such, the Town has properly applied the mandatory provision preventing the release of any information pertaining to those investigations. In fact, the Town is legislatively mandated to withhold the information in its entirety.

[6] The Town also made arguments related to the application or consideration of section 14(6) of the **Municipal Conduct Act**, as follows:

First, the Access to Information and Protection of Privacy Act, 2015 (ATIPPA) contains a clear paramountcy clause. Section 7 states that in the event a conflict exists between the ATIPPA and another Act, the ATIPPA “shall prevail,” with the exception of those provisions listed in Schedule A. There are no provisions from the Municipal Conduct Act listed in Schedule A . . . section 33 contains a definition of “workplace investigations” that includes a stand-alone reference to investigations related to harassment. Again, as previously noted, sub-paragraphs 33(1)(c)(i) and 33(1)(c)(iii) refer specifically to employees, while sub-paragraph 33(1)(c)(ii) does not. It is the opinion of the Town that the absence of any reference to “employee” in sub-paragraph 33(1)(c)(ii) clearly indicates that in the specific case of an investigation involving harassment, the fact that one or more of the parties to the investigation is a councilor is irrelevant. I would also note the use of the term “or,” in this provision, indicates that any one of the scenarios listed in this provision would constitute a workplace investigation. In consideration of section 7, section 33 of the ATIPPA would clearly prevail over section 14(6) of the Municipal Conduct Act. I would also note here that section 33 is a mandatory provision and includes all relevant information. As such, the Town of Torbay is obligated to protect such sensitive information, and it is our position that a line-by-line review is not required in this case.

Second, and notwithstanding our position as described above, I note that section 14(6) applies to complaints “. . . filed under this section . . .” The investigation by [name of investigator A] was not in response to a complaint filed under section 14. While the Report does reference the Code of Conduct, the investigation was completed in response to a request from the Mayor to

conduct a general investigation into allegations of harassment and unsafe working conditions. As such, we would argue that section 14(6) does not apply to the [name of investigator A] Report.

Third, section 14(6) references complaints in general and makes no reference to harassment complaints. I agree that investigations into the conduct of councilors and former councilors that does not involve harassment are not considered workplace investigations for the purpose of the section 33 exception to access. It is our position, however, that harassment investigations are to be treated differently, for reasons described above.

Fourth, section 14(6) applies to complaints against councilors filed by members of the public and other councilors. The [name of investigator B] investigation was conducted in response to a complaint filed against a councilor by an employee of the Town and, as such, we would argue section 14(6) does not apply to the [name of investigator B] investigation. The complainant in this case is clearly an employee, which removes the application of section 14(6). I would also note the [name of investigator A] investigation included a number of employees.

COMPLAINANT'S POSITION

- [7] The Complainant made several submissions in support of his complaint. They noted the broad, overarching purpose of the Act and its “bias in favour of disclosure, as outlined in section 3,” along with highlighting, “that the burden is on the head of a public body to prove that the applicant has no right of access to the record or part of the record – as per section 43.”
- [8] The Complainant also pointed to the Town’s decision to invoke several sections of the Act which they described as “a blanket rejection of this request.” They highlighted that “all of the cited sections: 29(1)(a) and (b), 33(2), 35(1)(g), and 40(1), are information-level exemptions,” and as such, the responsive records ought to have been, “examined to ensure as much information as possible can be released,” citing section 8(2) of the Act.
- [9] The Complainant submitted that the Town “has used those information-level exceptions to issue a broad records-level rejection,” when it is “incumbent on the public body to provide reasons why each of these exemptions correctly applies to the entirely-withheld responsive records.”

[10] With respect to the Town's application of section 29(1)(a), the Complainant submitted that "it is unlikely that the entirety of the responsive records meet that definition of 'records that document the internal discussions and debates that are needed to develop and implement policies and plans.'" The Complainant also expressed skepticism at the application of subsection (b), noting their request, "didn't ask for a 'formal research report or audit report' and most if not all of the responsive records would, presumably, not fit in that category."

[11] With respect to the Town's application of section 33(2), the Complainant cited this Office's past reports which determined that section 33(2) was not applicable when the investigation at issue involved elected officials.

[12] With respect to the Town's final response letter, the Complainant took issue with the Town's rationale for its application of redactions; in particular noting it made a number of claims that have no apparent grounding in the Act. The Complainant specifically highlighted the Town's claim that it "felt" that at this time it would be harmful to release any information from the responsive records, stating:

Despite what town officials may feel, the law is clear.

I may, for example, feel that public bodies should release all information that falls under discretionary exemptions, because there is nothing prohibiting them from doing so. However, the law permits them to withhold this information when the exemptions properly apply. My feelings don't matter.

The OIPC review of this appeal should be grounded in ATIPPA, not in the feelings of the public body.

ISSUES

[13] At issue is the application of exceptions to access at sections 29(1)(a), 33(2), 35(1)(g), and 40.

DECISION

[14] The relevant sections of the Act include the following:

8 (2) The right of access to a record does not extend to information excepted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.

...

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;

...

33 (2) The head of a public body shall refuse to disclose to an applicant all relevant information created or gathered for the purpose of a workplace investigation.

...

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

...

(g) information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body.

...

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.

...

(3) The disclosure of personal information under paragraph (2)(m) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

...

(c) the personal information relates to employment or educational history.

(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;

...

(f) the personal information has been supplied in confidence;

...

(h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant.

[15] After the initial response to this Office from the Town, a request for a copy of the records demonstrating a line-by-line application of sections 29, 35 and 40 was first met with the response that this was “not required,” with the Town expressing the position that if this Office had first considered its section 33(2) argument then “a line-by-line review would not have been necessary.” With these statements from the Town; along with the fact it withheld the records in full from the Complainant and in its initial response to this Office; and had failed to articulate where it believed sections 29(1)(a) and 35(1)(g) applied, this Office can only conclude it had not properly considered these sections in accordance with the legislation through a line-by-line application when processing the Complainant’s access request. In Reports [A-2024-054](#) and [A-2024-057](#), this Office discussed the role of a public body in applying information-level redactions in a line-by-line manner in accordance with section 8 and also highlighted the public body’s role as decision-maker of first instance, along with the burden a public body has under section 43 in establishing that any exception to access has been properly applied.

Section 33(2)

[16] The Town's eventual primary position in response to this complaint was that section 33(2) should apply to redact the records in their entirety. After review, I do not find that either report of the responsive records falls within the description of a workplace investigation, and therefore section 33(2) is not applicable. Workplace investigations are defined at 33(1)(c), as follows:

33. (1) For the purpose of this section

...

(c) "workplace investigation" means an investigation related to

- (i) the conduct of an employee in the workplace,
- (ii) harassment, or
- (iii) events related to the interaction of an employee in the public body's workplace with another employee or a member of the public which may give rise to progressive discipline or corrective action by the public body employer.

[17] Neither section 33(2)(i) nor (iii) fit the description of either incident: the first report is a complaint made by an employee of the Town against a Councilor and the second report is an investigation initiated by the Mayor and Chief Administrative Officer into the conduct of the Town Council. While both investigations deal in the issue of harassment, neither involves harassment in a workplace or between employees or the public, but rather the conduct of elected officials, primarily at Council sessions, and in their capacity as elected officials of the Town. This Office has made clear our position on investigations involving elected officials, including those of municipalities, in relation to the application of section 33 in Report [A-2023-034](#):

[10] As such, as an elected official of the Town, ATIPPA, 2015 does not grant the same protections to the named elected official who is the respondent to the harassment investigation as those afforded to an employee. Given that the respondent to the harassment complaint is an elected official, the investigation does not constitute a workplace investigation as defined by the Act, and section 33 cannot apply.

[18] As well as our subsequent report [A-2023-049](#), that underscored this same conclusion:

[11] Since section 33, an exception for records relating to workplace investigations, is a mandatory exception to access, it would be pertinent to consider it in this Report. The exception was recently considered in A-2023-034, which addressed the applicability of the workplace investigation exception to elected officials. In that case, this Office confirmed that section 33 cannot be used to withhold investigative reports about the conduct of elected officials and recommended the release of the report at issue...

[19] In September 2022, the Province of Newfoundland and Labrador proclaimed into force the **Municipal Conduct Act**. Under authority of section 12 of that legislation, each municipal council in the province was required to establish, within six months of it coming into force, a code of conduct that applies to all councilors. Section 12(3), together with section 5 of the Municipal Conduct Regulations, sets out the minimum requirements that must be included in each code, and requires that it establish a complaint process, a resolution process which includes a referral to mediation and investigation, and a process for providing reports.

[20] The Department of Municipal and Provincial Affairs developed and circulated a Code of Conduct template that councils could adopt within their respective communities thereby ensuring that its code is compliant with municipal legislation, other related legislation, and procedural fairness. The Town confirmed that on November 14, 2022, by way of motion RES-386-2022, its town council adopted the template provided by the department as its “Municipal Councilor Code of Conduct,” which includes a “Complaint and Investigation Process,” under which the first of the two responsive record investigations were conducted. The second investigation (and responsive record) report was not in response to a complaint filed under section 14. While it references the Code of Conduct, the investigation was in response to a request from the Mayor to conduct a general investigation into allegations of harassment and unsafe working conditions involving members of Council.

[21] While the Town has argued that section 14(6) of the **Municipal Conduct Act**, which outlines the process for code of conduct complaints, is not applicable because the party filing the complaints or instigating the investigations in both circumstances is neither a member of the

public nor another councillor, I still find the inclusion of the section and its intention worth considering broadly:

14. (6) A complaint filed under this section against a councillor or former councillor by a member of the public or another councillor is not considered a workplace investigation for the purposes of section 33 of the Access to Information and Protection of Privacy Act, 2015.

[22] The clear intent here is consistent with the position set out by the Supreme Court in [Kirby v. Chalk](#) and highlighted in our recent Report [A-2025-019](#):

[8] This Office does not interpret the access provisions of the Act in that way. Our legislation does not explicitly include volunteers in the definition of “employee” in section 2(i). Further, the legislature in section 40(2)(f) has also created a much broader provision which applies to “members and officers” of a public body in addition to “employees”. This indicates that the definition of employee in section 2(i) should be interpreted narrowly, to exclude members and officers of public bodies. If the definition of employee already included members and officers, the separate reference to those other categories in section 40(2)(f) would be unnecessary.

[9] Similar issues arose in the recent Supreme Court case of Kirby v. Chaulk. The court, in reviewing the provisions of the Act and their application to the facts in that case, noted that the Act in several places distinguishes between “employees,” “officers,” and “elected officials,” and determined that the definition of “employee” could not be expanded so as to cover elected members of the House of Assembly.

[23] The Town has asserted that the Act contains a clear paramountcy clause in section 7 that in the event a conflict exists between the **Access to Information and Protection of Privacy Act, 2015** and another act, the **Access to Information and Protection of Privacy Act, 2015** “shall prevail,” with the exception of those provisions listed in Schedule A, and going on to note there are no provisions from the **Municipal Conduct Act** listed in Schedule A. However, I find that there is no conflict between these sections or the two pieces of legislation on this issue.

Section 29(1)(a)

[24] As the Town dropped its application of section 29(1)(b) subsequent to the filing of this complaint, the sole focus of review of this section rests now with subsection 29(1)(a). The Town has indicated that it believes this section is applicable to the recommendations portions of the second Report, and I am in agreement with this application of the section as the

information redacted fits within the description of this section as advice, proposals, recommendations, analyses or policy options developed by or for a public body.

Section 35(1)(g)

[25] The Town has indicated a handful of places in the first report where it believes this section to be applicable. I find that it has not met its burden of proof in any of these instances. The portions of the records in question predominantly pertain to a third-party report commissioned by the Town which discussed a “culture of harassment” within the Town and recommendations stemming from that, and the statements of parties in the report in relation to this.

[26] The Town has offered little in the way of arguments to support its application, other than noting that the Chief Administrative Officer feels it would be harmful to release any information pertaining to investigations in the Town because it does not want any perception that there may be dysfunction in the public body to have any adverse effect and does not wish to avert economic, business or residential growth in the community. It also cited the mental health and well-being of Councilors.

[27] I do not find any of the Town’s submissions to be sufficient to demonstrate a reasonable likelihood of prejudice the financial or economic interests of the Town, were this material to be disclosed.

Section 40(1)

[28] I am mostly in agreement with the Town’s application of section 40 to protect the personal privacy of third parties, including its application to withhold large sections of the first report. Some of these paragraphs discuss what would normally be considered historical, background, and publicly available information and are therefore disclosable. However, in this specific circumstance they offer background on the role of one of the parties to the report which could threaten to reveal their identity.

[29] There are a couple of instances where I find some portions of the redactions pursuant to section 40 have been applied too broadly and some additional limited information could be

disclosed as it is not in keeping with this section and its purpose. Likewise, in other instances the Town has failed to redact all pronouns, and I find those ought to be redacted pursuant to section 40 as not doing so would potentially make the parties involved more identifiable.

[30] Finally, there is a direct quote from a Council meeting of one of the parties in the report that has not been redacted and I find that this ought to have been redacted, for reasons similar to those noted above: while typically this information would be disclosable as publicly available, to do so in this context would identify the party making it.

RECOMMENDATIONS

[31] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** I recommend that the Town of Torbay disclose the responsive records to the Complainant, continuing to withhold some of the information pursuant to sections 29(1)(a) and 40 as highlighted in a copy of the responsive record accompanying this Report.

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

[33] Dated at St. John's, in the Province of Newfoundland and Labrador, this 5th day of May 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador