



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2026-021

August 17, 2026

Town of Sunnyside

Corrected Report

(Re-Issued August 20, 2026)

Summary:

The Complainant made a complaint to this Office stating that information disclosed by the Town of Sunnyside appeared to have violated section 65(1) (Retention of personal information) of the **Access to Information and Protection of Privacy Act**. The OIPC investigated this complaint, with the Town advising that it destroys all emails after 30 days and all text messages after 10 days. This practice continued during the period of time when the Town was addressing a Municipal Code of Conduct complaint against the Complainant. As a result, no records exist of how and why the town council determined that the Complainant violated the Code of Conduct. The Commissioner found that the Town did not comply with section 65(1) of the Act and recommended that the Town establish a retention schedule for records, that it better manage council and staff emails, and that town council and staff refrain from using text messages to discuss town business.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 13(u), 65(1) and 65(2)

Other Resources:

Professional Municipal Administrators, [IM@Work Toolkit](#)
OIPC Practice Bulletin: [Use of Personal Email Accounts for Public Body Business](#)

BACKGROUND

- [1] The Complainant in this matter is alleging that the Town of Sunnyside deleted information regarding a decision by the Town that affected the individual, contrary to section 65(1) of the **Access to Information and Protection of Privacy Act, 2015** (the ‘Act’). That provision requires information used in such a decision to be retained for at least one year from the date it was used.
- [2] The Complainant filed two ATIPP requests with the Town, which resulted in the disclosure of a record describing the Town’s practice of destroying records within a short period of time after being created or used. It was this letter that prompted the Complainant to file a complaint with this Office regarding a contravention of section 65(1) of the 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 Town stated that it disposes of records on a regular basis to ensure security and to avoid confusion. It only maintains those records that are necessary to meet its requirements under the **Towns and Local Service Districts Act** and other related Acts. The Town does not have a records retention policy and claimed that they were encouraged by the Department of Municipal and Community Affairs to destroy records rather than retain them. The Town did not make any statement regarding records related to the Complainant and did not know anything about section 65(1) of the Act.

COMPLAINANT’S POSITION

- [5] The Complainant is currently involved in a Municipal Code of Conduct complaint that is in the investigation phase. The Complainant asserts that their rights to a fair process and a proper defence against the Code of Conduct complaint was undermined by the Town’s destruction of information.

ISSUES

- [6] Did the Town violate section 65(1) of the Act?

DECISION

[7] Section 65(1) of the Act states:

65.(1) Where a public body uses an individual's personal information to make a decision that directly affects the individual, the public body shall retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.

[8] Alleging that a public body has contravened section 65(1) is not a common complaint made to this Office. There is no legislative requirement that municipalities establish information management programs. This Office has promoted the development of such plans and progress has certainly been made, but unfortunately, there is currently no monitoring as to whether these plans are being followed, abandoned, or somewhere in between. We refer municipalities to excellent work done by the Professional Municipal Administrators who, in partnership with the College of the North Atlantic, have developed an [information management work toolkit](#) which contains retention schedule templates and summaries designed for small towns.

[9] Section 65(1) is prescriptive – towns must adhere to a record retention requirement for specific records used or generated to make a decision that affects an individual. Towns must follow section 65, and failure to do so is a contravention of the Act.

[10] Section 3 of ATIPPA, 2015 references accountability and transparency as core purposes of the Act. The requirement in section 65(1) operationalizes those purposes by stating clearly that when a public body uses personal information to make a decision that affects an individual that it must retain that information for at least one year. This is not an onerous requirement and is essential to ensure transparency and confidence in a public body's decision-making authority.

[11] Unlike other access complaints where this Office can make a recommendation regarding the release of records and the duty to provide a reasonable search for records, there are no recommendations that this Office can make to bring destroyed records back into existence.

Thus, when faced with such a complaint, this Office's recommendations must be more forward looking.

[12] There are several issues that this Office considers when assessing if there has been a contravention of section 65(1). First, the information destroyed must have existed and have been in the control or custody of the public body. Second, the information destroyed must be considered "personal information" as defined by the Act. Section 2(u)(viii) of the Act includes in its definition of personal information "the opinions of a person about the individual." Third, the personal information must have been used to make a decision that affects the individual. If no decision is made using this personal information, there is no contravention of section 65(1). Lastly, the personal information must have been destroyed within one year of the last time the information was used to make a decision that directly affects the individual.

[13] It is irrelevant whether or not other sections of the Act could support denying access to the information. The purpose of section 65(1) is not to guarantee access to records, it is to provide an individual with the opportunity to request access to the records. The right to make an application for access to information is a right provided for under ATIPPA, 2015, and it is core to the purpose of the Act. Destroying information prematurely, in contravention of section 65(1), deprives the individual of that right.

[14] The Town's initial search for responsive records, as required by the Complainant's access request, was limited in scope. The members of council and staff used their own personal cellphones for Town business and the Town provides no monitoring or collecting of emails or messages sent or received on these phones. When asked why these phones were not searched, the Town replied that it did not think to do so because all records were destroyed and nothing would be on phones.

[15] As part of this investigation, the Town was asked to conduct two additional searches. The first focused on the phones and emails of the councillors. This search was conducted by the Town Clerk. There were responsive records found on one phone, which focused on guidance from the Department of Community and Municipal Affairs. There was also information and the

minutes for two council meetings that were focused on the Complainant. Nonetheless, the search of councillors phones and text messages produced no records addressing the Code of Conduct accusations against the Complainant, what the council should do, or who held this opinion. The second search for records that this Office requested produced the minutes from a council meeting on February 23rd that addressed the Code of Conduct complaints.

[16] The search for records did provide some clarity on how the Town manages its communications. In one disclosed email, a representative of the Town writes that they delete all emails after thirty days and text messages after ten days, and sometimes after seven days. In response, a council member notes that any search for responsive records in this matter would find nothing on their phone as they delete emails “around” every thirty days.

[17] An Analyst with this Office held a lengthy discussion with the Town Clerk about how emails and texts were handled. The Clerk confirmed that this was not an official policy and was not written down in any document. Rather, the destruction of the emails, texts, and other council material was a practice conducted by Council. For the Clerk, the practice was in place to avoid any confusion and to have one definitive record in the form of minutes of the meeting.

[18] A significant challenge with a complaint alleging a violation of section 65(1) is proving that records that are now destroyed did in fact exist. Ideally, someone will have seen the records in question and can attest to either their existence, destruction, or both. In considering whether records did exist, this Office applies a balance of probabilities standard, meaning that it is more likely than not that records existed.

[19] In considering whether records exist, two connected approaches were considered. The first is the subject matter about which the Complainant is seeking records and asserting a contravention of section 65(1). The Municipal Conduct Act came into force in 2022. It governs the behaviour of council and staff by providing a process for dealing with complaints and sanctions regarding a Municipal Code of Conduct.

[20] As noted above, the Complainant is subject to a Municipal Code of Conduct, the specific process for which is not the subject of this Report. However the timeline from January 29 to February 23 is important to consider:

1. January 29, 2026: Complainant accused of three Municipal Code of Conduct violations;
2. February 1 to February 19: growing animosity between members of council and the Complainant. The Complainant retains outside legal counsel
3. February 19: Town holds closed meeting that the Complainant cannot attend. At this meeting it is determined that the Complainant has violated the Municipal Code of Conduct and that Motions of Council will be drafted confirming this finding, and that it would be presented at the next public meeting.
4. February 23: Town holds a public meeting and votes in favour of each of the three motions covering the Municipal Code of Conduct violation against the Complainant. The Town then suspends the Complainant for three months.

[21] During this entire 25 days, the Town has been unable to provide any records with any member of council giving any sort of opinion about code of conduct allegations against the Complainant – there are no emails or text between councillors, no written notes, and no comments written in the margin of whatever information the Council members were provided. It is difficult for this Office to accept, especially in light of the Town’s destruction of records practices, that no records were created in this period of time that expressed an opinion on the allegations against the Complainant. This leads to the conclusion that it is more likely than not that records existed.

[22] This Office’s perspective that records more than likely existed is augmented by a lengthy conversation between our Analyst and a representative of the Town during the course of our investigation. This individual again confirmed the manner in which the Town handles correspondence. More importantly, this individual did not deny that records were created at the February 19 meeting. They could not speak of anything specific about members of council and did not go into specifics about their own records. However, when discussing section 65(1), this individual accepted that there was likely a contravention of the section and that the Town’s biggest concern was that the sanction for this contravention was not too severe or

costly. This Office sees no reason to disbelieve this individual who had nothing to gain by being straight forward in this matter.

[23] The second aspect of a section 65(1) claim that must be considered is that the information that was destroyed contained personal information, which includes opinions expressed about an individual. In this instance, the representative of the Town did state, during the closed meeting, there were deliberations about the Complainant – their conduct, actions, and responses. Any records of such opinions of the Complainant constitute personal information under the Act.

[24] The personal information of the Complainant was used to make a decision about them. The entirety of the February 19 and February 23 meetings were about expressing opinion on the accusation against the Complainant. Council used these opinions to determine that the Complainant did violate the Code of Conduct. These determinations in turn led to the passing of motions of council, which in turn led to the Complainant being suspended from council for months. The council could not get from the “receiving the complaints” stage to the “sanctioning the councillor” stage without the expression of opinion about said councillor.

[25] To the best of their knowledge, the Town representative believes that all information from both the February 19 and February 23 meetings was destroyed. This likelihood is supported in the email referred to above from the councillor who confirmed the thirty day deletion practice. Despite multiple searches by the town, there appear to be no records in existence regarding why and how the Town came to its conclusion on the alleged Municipal Code of Conduct violations by the Complainant.

[26] Given that the Complainant was not in the room when important decisions were made about them, it is impossible to know what records were destroyed and by whom. As a result, this Office finds that there was non-compliance with section 65(1). Unfortunately it is not possible to restore any records that have been destroyed.

[27] It is plausible that records in this matter were destroyed to avoid them being disclosed in an access to information request, which is contrary to section 65(2). If there were evidence beyond a reasonable doubt that this was done willfully to evade an access request it would

be an offence under section 115(2)(d), which could lead to fines or imprisonment. The Complainant made access requests on February 20 and February 23, immediately after the meetings dealing with the Code of Conduct violations. These timelines were well within the 10 and 30 days the Town applied to when records should be destroyed. On March 3, 2026, the Town sought an extension from this Office citing the large number of records that needed to be reviewed. However, when the access request was fulfilled by the Town, it included very few records, mostly consisting of correspondence between this Office and the Town and emails sent or delivered to the Complainant. It is plausible that the destruction of records from the February 19th and 23rd meeting was expedited so as to prevent them from coming into the possession of the Complainant.

[28] While it is possible to infer such a motive, it is not sufficient to establish that a violation of section 65(2) occurred. However, the mere fact that this suspicion arises speaks to the improper way that the Town handled the documentation in this matter.

RECOMMENDATIONS

[29] Under my authority of section 47 of the Access to Information and Protections of Privacy Act, I recommend that the Town of Sunnyside:

1. Establish a records retention schedule for all records that meets or exceeds that which is required by section 65 of the Act within 60 days;
2. That the Town review and implement where practicable policies and procedures recommended in our guidance document [Use of Personal Email Accounts for Public Body Business](#)
3. That the Town refrain from using text messages to communicate on Town matters;
4. That the Town establish a safe and centralized location for storing all emails sent to and from members of Council and staff to enable appropriate information management;
5. That the Town establish email addresses for all members of council and staff and refrain from using personal email addresses for Town business.

6. That until the Town is able to implement recommendation number 5, that the Town ensure all emails received and sent for Town business be forwarded to the Town office email for appropriate information management storage.

[30] 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 Sunnyside 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.

[31] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of August 2026.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador

APPENDIX

Corrections made on August 20, 2026:

1. The last sentence of paragraph 12 was amended to state (bolded to indicate changed portion):

Lastly, the personal information must have been destroyed **within one year of** the last time the information was used to make a decision that directly affects the individual.