



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2026-023

August 20, 2026

Town of Botwood

Summary:

The Complainant made an access request to the Town of Botwood for records about Motion 25-190 and the call for a special meeting to rescind the motion. The Complainant also requested meeting minutes concerning the memorandum of understanding between the Town and the Exploits Valley Port Corporation and a lease agreement between the two parties. The Town provided responsive records to the Complainant, but withheld information under section 35 (disclosure harmful to the financial or economic interests of a public body) of the **Access to Information and Protection of Privacy Act, 2015**. The Complainant claimed that the Town had misapplied the exception to access, that section 9 (public interest) applied, and failed to conduct a reasonable search for records. This Office found that the Town had appropriately applied section 35 and section 9 and recommended that the Town continue to withhold the redacted information. This Office also determined that the Town had conducted a reasonable search for records.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, section 9, 13, and 35.

[Towns and Local Service Districts Act](#), SNL 2023, c. T-6.2, section 39 and 60.

Authorities Relied On: NL OIPC Reports [A-2024-011](#), [A-2023-012](#), [A-2018-021](#).

[Canada \(Office of the Information Commissioner\) v. Calian Ltd.](#), 2017 FCA 135 (CanLII).

[Mastropietro v. Newfoundland and Labrador \(Education\)](#), 2016 NLTD(G) 156.

BACKGROUND

- [1] The Complainant submitted a request to the Town of Botwood (the “**Town**”) under the **Access to Information and Protection of Privacy Act, 2015** (the “**Act**”), for records concerning Motion 25-190, and its subsequent rescindment, all meeting minutes concerning the memorandum of understanding between the Town and the Exploits Valley Port Corporation (“**EVPC**”), and/or a lease agreement between the two parties.
- [2] The Town responded by providing partial access to the records, but withheld some information, citing the exception to access in section 35 (disclosure harmful to the financial or economic interests of a public body). The Complainant proceeded to file a complaint with this Office asserting that the exception in section 35 was not properly applied, that section 9 (public interest) ought to apply to allow disclosure and that the Town had failed to conduct a reasonable search for records.
- [3] As informal resolution was unsuccessful, and the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY’S POSITION

- [4] The Town maintains that it appropriately withheld one of the records under section 35 and section 9 did not apply to allow disclosure of the records.
- [5] The Town also maintains that a reasonable search for records was conducted and that it has met the duty to assist under section 13.

COMPLAINANT’S POSITION

- [6] The Complainant argues the records withheld under section 35 the Act must be disclosed or that section 9 applies to allow the disclosure as a matter of public interest.

[7] The Complainant states that section 60(4) of the **Towns and Local Service Districts Act** (“**TLSD Act**”) requires that a record be made in the meeting minutes of any advice provided by the Town Manager. The Complainant argues that had this requirement been complied with they would already have access to the record.

[8] The Complainant also argues, in relation to section 9 of the Act, that the public interest in disclosure of the information outweighs the reasons for the exception. In particular, the Complainant submits that the record may demonstrate that the Town’s Chief Administrative Officer (“**CAO**”) called, or influenced Council to call, a special meeting, thereby violating the TLSD Act.

[9] The Complainant has also asserted they have not received all the information to which they are entitled in response to their request for information. In particular, the Complainant is dissatisfied with the lack of records concerning the calling of the special meeting in which Motion 25-190 was rescinded. The Complainant submits that all requests for a special meeting are required to be in writing; therefore, responsive records ought to exist.

ISSUES

[10] The issues to be addressed in this Report are:

1. Whether the Town properly applied section 35 of the Act;
2. The application of the public interest override in section 9; and
3. Whether a reasonable search for records was conducted.

DECISION

Section 35

[11] The body of one email sent by the CAO of the Town to two members of Council concerning an invoice was redacted pursuant to section 35 (disclosure harmful to the financial or economic interests of a public body) of the Act. Initially, the record was withheld under section 35(1)(f) which allows the public body to refuse to disclose information which could reasonably be expected to disclose positions, plans, procedures, criteria or instructions developed for

contractual or other negotiations by a public body. During the early stages of the investigation the public body instead chose to withhold the email under section 35(1)(g) of the Act, which reads as follows:

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.

[12] The public body has argued that, due to ongoing negotiations, that releasing this record could reasonably be expected to harm the financial or economic interests of the Town.

[13] Section 35(1)(g) of the Act is focused on 'prejudice' to the financial or economic interests of the public body. As stated in Report [A-2023-012](#), at paragraph 24, this possible prejudice must be reasonably likely on the basis of facts.

[14] In Report [A-2018-021](#), this Office cited the Federal Court of Appeal's decision of Canada (Office of the Information Commissioner) v. Calian LTD., which spoke to the level of specific harm that one must establish at paragraph 50:

... there is an element of forecasting and speculation inherent to establishing a reasonable expectation of probable harm. As long as the prediction is grounded in ascertainable facts, credible inferences and relevant experience, it is unassailable.

[15] Through this investigation, we have concluded that a reasonable expectation of harm has been established by the public body and is grounded in ascertainable facts. The Town is involved in ongoing negotiations, so to release the record at this time could reasonably be expected to prejudice the financial and economic interests of the Town. Once negotiations are complete release of the record could be reassessed.

[16] The Complainant argues the record should be released on the basis that the information contained within should have been recorded and made publicly available in a Council meeting. This is in accordance with section 60(4) of the TLSD Act which states:

60(4) Where a town manager provides advice or makes a recommendation to the town council, the town council shall consider and make a record of the advice or recommendation in its minutes but the town council is not required to follow the advice or recommendation.

[17] While it is true that the TLSD Act requires the Town to record this correspondence in the meeting minutes, this did not occur. To do so now would be to create a new record, which this Office has no jurisdiction to recommend. Furthermore, this Office also has no authority to enforce the TLSD Act.

[18] Even if such a record were to exist in the meeting minutes, it is not known whether the meeting minutes would describe in full what was stated in the correspondence.

[19] I am satisfied that the Town has appropriately applied section 35 of the Act and I recommend the information continue to be withheld.

Section 9 – Public Interest Override

[20] The Complainant has also argued that the information at issue is of public interest as it relates to the actions taken by the CAO and the Town Council and their compliance with the TLSD Act.

[21] The Complainant has noted that the public interest in knowing what was said in the email outweighs the reason for the exception. Specifically, the email may show that calling the special meeting was initiated by the CAO, which the Complainant believes would demonstrate an attempt by the CAO to influence Council, in contravention of the TLSD Act. The email may also show that 24-hour notice was not given before the special meeting occurred, thus violating section 39(6) of the TLSD Act.

[22] At paragraphs 42-44 of [Mastropietro v. Newfoundland and Labrador \(Education\)](#), the Supreme Court of Newfoundland and Labrador held that the burden of proof under section 9 is on the Complainant as they are the one asserting the right to access a record on the basis of public interest. The Court has, however, recognized that an applicant cannot view the

records, so this evidentiary burden is relaxed somewhat as outlined by the Court at paragraph 47:

I agree with the general principle that a party asserting a right has the onus of establishing entitlement to that right. I also agree that this onus cannot be absolute but must be relaxed somewhat in a situation such as this, where the Applicants have not had the benefit of reviewing the document on which they are required to make submissions as to whether the public interest override should prevail.

[23] In this case, I have concluded the Complainant has not provided sufficient argument and evidence as to why disclosure of this record would be in the public interest, and furthermore, the information in the record itself, as well as the context provided by the Town, does not support such a conclusion. While there is a valid public interest in knowing if a Town is compliant with the TLSD Act, this Office has reviewed the record, and the withheld information in the record contains no reference to the calling of a special meeting. Additionally, while there may be public interest in the invoice, at this time I conclude the risks the Town has put forward support the decision to withhold the record at this time.

Section 13(1) – Duty to Assist

[24] Section 13 of the Act imposes on public bodies a duty to assist access to information applicants, as follows:

13. (1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

[25] The issue in this matter is whether the public body responded in a complete manner to the Complainant's request for information by conducting a reasonable search. Specifically, the Complainant asserts that multiple records, and pieces of information, requested were not provided.

[26] The first record noted by the Complainant as not having been received is documentation of the calling of a special meeting on December 11th, 2025, to rescind Motion 25-190. As part of the responsive records, the public body provided email correspondence stating the Town does not recall who requested the special meeting.

[27] Section 39 of the TLSD Act requires the following when calling a special meeting:

39(5) Where a special meeting is called under subsection (4), the town clerk shall give notice of the special meeting to all councillors by delivering a notice to

- (a) the councillor;
- (b) the councillor's place of residence; or
- (c) the councillor's place of business.

[28] Despite the legislative requirement to deliver a notice, the Town has advised there is no such record. Issues concerning compliance by Towns with the TLSD Act may be brought to the attention of the Minister or pursued through the courts, but they do not fall within the authority of this Office.

[29] Lastly, the Complainant asserts not receiving meeting minutes which detail the memorandum of understanding between the Town and the EVPC and/or a lease agreement between the two parties. The Town has confirmed that all meeting minutes created were posted publicly on the Town's website.

[30] From my review of the Town's submissions, I am satisfied that a reasonable search for responsive records was conducted. While certain records that the Complainant was expecting were not provided that does not imply the public body did not conduct a reasonable search, but rather that the records may not exist. I conclude the Town has met its duty to assist the Complainant.

RECOMMENDATIONS

[31] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend the Town maintain its position on this matter and continue to withhold the information pursuant to section 35.

[32] 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 Botwood 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 20th day of August 2026.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador