



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report P-2017-005

October 13, 2017

### Town of Eastport, Town of Happy Adventure, Town of Salvage, Town of Sandringham and Town of Sandy Cove

#### Summary:

The Complainant made a complaint to this Office alleging that their privacy had been breached by the disclosure of a letter addressed to the Town of Eastport regarding its fire department. An investigation found that the letter containing the Complainant's personal information was provided to the Chief of the Eastport Fire Department, but was unable to identify who provided the letter to him. The letter had been addressed to the five towns and one local service district of the Eastport Peninsula Joint Council and contained personal information of its author. The complainant had made a request for confidentiality in the letter. A best practice would have been to contact the complainant to explain that it would not be possible to address the issues without sharing the letter with the individuals referenced in it, and ask if they still wished to proceed. In this circumstance, a request for confidentiality intended to exclude the individuals referenced in the letter was not reasonable if the complainant wished their issues to be addressed. Proper use or disclosure of personal information requires the public body to limit use or disclosure to minimum necessary and there is no indication that this was done in this instance. Recommendations were made to the local public bodies regarding handling personal information, the disclosure of personal information to town councils and avoiding conflicts of interest.

**Statutes Cited:** [Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A 1.2.

[Municipalities Act, 1999](#), SNL 1999, c M-24.

**Authorities Cited:** Newfoundland and Labrador OIPC Reports [P-2017-002](#) and [P-2008-004](#).

**Other Resources:** [ATIPP Guide for Municipalities \(October 2015\)](#)

Municipalities Newfoundland and Labrador, *Continuities and Discontinuities: A Brief History of Local and Regional Government in Newfoundland and Labrador* (St. John's, Municipalities Newfoundland and Labrador, 2010).

Municipalities Newfoundland and Labrador, *Searching for a Purpose: A Current Assessment of Municipal Government and Regional Governance in Newfoundland and Labrador* (St. John's, Municipalities Newfoundland and Labrador, 2010).



## I BACKGROUND

- [1] The Complainant wrote a 6 page letter detailing various concerns about the Town of Eastport Fire Department (the “Fire Department”) dated January 10, 2017 (the “Letter”). The Letter was addressed to the Eastport Peninsula Joint Council, being an informal meeting of the town councils of the towns of Eastport, Happy Adventure, Salvage, Sandringham, Sandy Cove as well as the local service district of Burnside – St. Chad’s (the “Joint Council”). Under the subject line “Response to Recent Attempts at Wrongful Dismissal”, the Letter addressed the Complainant’s removal from the Fire Department, the status of training amongst members, morale and various practices of the Fire Department and its leadership. In addition to detailing the Complainant’s concerns, the Letter requested a meeting of the Joint Council to discuss the issues and grievances outlined in the Letter.
- [2] On or about January 14, 2017, a response to the Letter was drafted by another member of the Fire Department and sent to the Joint Council under the subject line “Response to Allegations by [named Complainant]” (the “Response Letter”). Based on the content of the Response Letter, at some time between January 10, 2017 and January 14, 2017, the Letter was apparently disclosed to the author of the Response Letter (the Assistant Deputy Fire Chief) by one of the public bodies to which it had been addressed.
- [3] The requested meeting of the Joint Council was held on January 19, 2017, hosted by the Town of Happy Adventure and chaired by the Mayor of the Town of Salvage. The Complainant was in attendance for the first part of the meeting. The Fire Department’s executive also separately attended the Joint Council meeting, following the Complainant’s departure. The meeting was not otherwise announced to the public. It was at this meeting that the Complainant became aware, by way of references to the Response Letter, that the Letter had been disclosed by one or more public bodies to a member or members of the Fire Department. The Complainant also advised that they were later informed by the Chief of the Fire Department that he had obtained a copy of the Letter from the Town of Eastport.
- [4] On June 7, 2017, the Complainant filed a complaint with this Office against the Town of Eastport and I initiated an investigation.

[5] It was necessary to widen the investigation to cover all public bodies involved once it became apparent that the Letter had been addressed to public bodies other than the Town of Eastport (i.e. the towns of Happy Adventure, Salvage, Sandringham, Sandy Cove, and the local service district of Burnside – St. Chad’s).

## II PUBLIC BODY’S POSITION

[6] The public bodies involved provided submissions as follows:

### Eastport

[7] The Town of Eastport denied that it had disclosed the Letter to the Chief of the Fire Department or any other member of the Fire Department and only the Town Clerk and members of council had access to the Letter. The Town advised that once it was in receipt of the Letter, it formed a committee consisting of the Town Clerk and three members of the town council to consider and address the concerns raised in the Letter.

[8] In its submissions, the Town of Eastport also noted that amongst those individuals who would have had access to the Letter by virtue of their roles as employees of or councillors for any of the involved towns, there would be numerous personal ties to the Fire Department, including town employees and councillors who are members of the Fire Department.

[9] The Town advises that the Chief of the Fire Department made repeated requests to be provided with a copy of the Letter, but states that these were refused owing to the privacy concerns in doing so.

### Happy Adventure

[10] The Town of Happy Adventure held a regularly scheduled meeting of its council on January 11, 2017, the day following its receipt of the Letter. The Letter was distributed to members of council, who were also cautioned about the sensitive nature of its contents and

the importance of protecting it from disclosure. It is standard practice for council members to file council minutes, agenda and correspondence with the Town Clerk rather than retain them after a meeting and it is understood that the copies of the Letter were similarly left with the Clerk and not taken from the Town's offices.

- [11] Only the Clerk has access to the Town's e-mail account or to the Town Clerk's office.
- [12] The Town advises that it does not have any formal policies or procedures that relate to the handling of the Complainant's personal information, but submits that it was at all times aware of the need for discretion and confidentiality and to take measures to protect the Letter from disclosure.
- [13] The Town further submits that other than copies made available to council members, the Clerk did not provide the Letter or other personal information of the Complainant to anyone else.

#### Salvage

- [14] The Town of Salvage advised that only the Town Clerk has access to the Town's e-mail account. The Clerk printed a single copy of the Letter and read its contents to members of council at the next regular meeting. Afterwards, the Letter was filed with the Clerk's secure files. The Town denies making any further copies of the Letter or distributing the Letter to any other persons.
- [15] The Town notes that it does not have a formal policy in place for the handling of personal information and correspondence, but its actions in this situation are typical practices that have been developed and followed over time.

### Sandringham

[16] The Town advised that only the Clerk has access to the Town's e-mail account and, to the best of its knowledge, neither the Town nor its Clerk were aware of the Letter being copied or forwarded to any other persons. The Town advises that it does not have specific policies or procedures for the handling of personal information other than to refer to the *ATIPPA, 2015* itself.

### Sandy Cove

[17] The Town advised that only the Clerk has access to its e-mail account. Two councilors attended the Joint Council meeting which was held on January 19, 2017 and they received copies of the Letter at that meeting but not beforehand. The Clerk advises that only one copy of the Letter was printed for the Town's records, which only the Clerk can access. The Town and its Clerk denied disclosing the Letter to any person.

## III COMPLAINANT'S POSITION

[18] As noted above, the Complainant stated that they had been advised by the Chief of the Fire Department that he had requested, and received, a copy of the Letter from the Town of Eastport. The Complainant remained concerned that their privacy had been breached with various personal and professional consequences.

## IV DECISION

### Public Bodies

[19] As a preliminary matter, it is necessary to briefly address the status of the parties involved in this complaint under the *ATIPPA, 2015*. As noted above, this complaint involves the conduct of several organizations located within the Eastport peninsula:

- (a) The Eastport Peninsula Joint Council;
- (b) The Town of Eastport;
- (c) The Town of Happy Adventure;
- (d) The Town of Salvage;
- (e) The Town of Sandringham;
- (f) The Town of Sandy Cove; and
- (g) The Local Service District of Burnside – St. Chad’s

[20] The Eastport Peninsula Joint Council is a forum for the elected members of the six municipalities to discuss issues of local concern. “Joint Councils” have a long history in Newfoundland and Labrador and are informal associations of mayors and councilors without any statutory existence or legal authority. The Eastport Peninsula Joint Council does not administer a budget or levy taxes and has no capacity to enforce decisions on its members or on the residents of the Eastport Peninsula. I find therefore that the Eastport Peninsula Joint Council is not a public body under the *ATIPPA, 2015*.

[21] The *ATIPPA, 2015* defines “public body” to include, at section 2(x)(iv) a local public body. At section 2(p)(iii), “local public body” is further defined to include a local government body, which in turn, at section 2(o)(iv) includes a municipality as defined under the *Municipalities Act, 1999*. Section 389 of the *Municipalities Act, 1999* states that “A local service district is not a municipality for the purpose of this or another Act”. Accordingly, I find that the Local Service District of Burnside – St. Chad’s is not a municipality and is not a public body under the *ATIPPA, 2015*.

[22] As to the remaining members of the Eastport Peninsula Joint Council, being the towns of Eastport, Happy Adventure, Salvage, Sandringham and Sandy Cove, I find that they are all local government bodies and subject to the *ATIPPA, 2015*.

## Personal Information

[23] Disclosure of correspondence containing complaints may be contrary to the *ATIPPA, 2015* if it contains personal information and any disclosure is not authorized by the *Act*. Having reviewed the Letter, I find that it contains personal information as follows:

- (a) Section 2(u)(i): The individual's name, address or telephone number;
- (b) Section 2(u)(vii): Information about the individual's educational, financial, criminal or employment status or history;
- (c) Section 2(u)(ix): The individual's personal views or opinions, except where they are about someone else.

[24] While many of the Complainant's personal views or opinions expressed in the Letter are about individual members of the Fire Department, their other views and opinions are the personal information of the Complainant. From a review of the Response Letter it is apparent that its author had access to a full and un-redacted copy of the Complainant's Letter.

## Use/Disclosure

[25] Though the Letter contained personal information, the public bodies may nonetheless be permitted to use or disclose the Letter provided that such use or disclosure is done in accordance with the *ATIPPA, 2015*, in particular, sections 66 and 68. While none of the public bodies consulted in this investigation put forward any claim that disclosure of the Letter was permitted, I must consider whether the disclosure of the Letter was authorized pursuant to the *Act*.

[26] On one hand, the Complainant stressed in the Letter that they hoped and intended that the matter remain "confidential, without garnering public and media attention". On the other hand, they also asked that the Letter be addressed in a "meeting of the Joint Councils". It is not clear whether the requested meeting, held on January 19, 2017, was intended to be public or private and the Letter did not request that the Joint Council meet in private.



Members of the public were not invited to attend the meeting and it was not publicized. Later meetings of the Joint Council addressing these issues were described as “privileged”. The minutes of the January 19 meeting were not published.

[27] One assumes that all public bodies receive complaints (and personal information associated with them) with the intent of assessing their validity and determining whether any remedial or corrective measures are required. As such, disclosure of personal information in complaints is generally consistent with the Act as long as:

- Use or disclosure is limited to the minimum amount of personal information necessary to address the complaint; and,
- Use or disclosure is limited to only personnel required to address the complaint.

[28] The ATIPP Office’s [Guide for Municipalities](#) advises that it will sometimes be necessary to withhold the personal information of complainants:

*Municipalities deal with a variety of different complaints, including speeding, littering, failing to maintain property, noise, etc. Such complaints deal with individuals but can also involve third parties and, in many cases, specific properties. If you receive a request for information relating to such a complaint, you should consider:*

- *will disclosing the information be harmful to law enforcement? See page 26.*
- *will disclosing the information be harmful to personal privacy? See page 24 and Appendix A.*

*Depending on the details of the request, it may be appropriate to release details of the complaint but not the identity of the person making the complaint. If you need assistance in responding to such a request, please contact the ATIPP Office for assistance.*

[29] The detailed Letter included references to:

- alleged misconduct by a number of persons, including the Chief of the Fire Department;

- serious public safety issues (supported by reference to the Complainant's professional qualifications and experience as someone who was in a position to offer opinions on those issues): and,
- a detailed history between some of the parties and the Complainant. The redaction of the Complainant's name alone would not have precluded their identification as the author.

[30] The allegations in the Letter could not be ignored by the members of the Joint Council. Unlike the situation addressed in [Report P-2017-002](#), the complaints in the Letter could not be properly addressed without providing the Complainant's personal information to those individuals whose actions were the source of the concerns. That Report discussed whether it is necessary or appropriate to disclose the identity of a complainant:

*There may be instances when it would be necessary to reveal the identity of a person making a complaint to either or both its subject and those reviewing it in order to properly respond to the matter. This would arise, for example, when the nature of the complaint necessitates knowledge of who has made it by the party being complained about in order for that party to be able to make full answer and defense. However, each case should be looked at individually with section 66(2) in mind; i.e. examining whether use of personal information is necessary for the purpose of review and response. Additionally there is arguably a vested public interest in assuring citizens that they can hold government, local or otherwise, to account without concern that their identity will be unnecessarily exposed. In this case the issue is an objective one based on facts, and the identity of the Complainant making the allegation is irrelevant.*

[31] Though use or disclosure of the Letter may have been permitted, all public bodies deny having disclosed the Letter. In the absence of any intention to disclose under the *ATIPPA, 2015*, the public bodies cannot have turned their minds to sections 66(2) and 68(2) or taken measures to limit disclosure to the minimum amount necessary. Indeed, as noted above, it appears that the Letter was disclosed in full soon after it was received.

[32] Further, as the Complainant had expressed the desire to keep the matter confidential, before sharing the Letter with anyone, the local government bodies should have contacted the Complainant to either seek their consent for the disclosure of their personal information or notify them that their personal information would be disclosed to the extent necessary to

address the matters raised in the Letter. In the circumstances of this matter if the Complainant did not consent, they would have to be advised that the complaints might not be investigated.

- [33] There are a number of parallels between this matter and the circumstances addressed in [Report P-2008-004](#). While noting that the Act did not require it, as the complainant had specifically expressed an expectation of confidentiality, the complainant in that case should have been advised prior to the disclosure of his personal information:

*[25] However, in many cases it will be apparent that although the individual has written to a public body with some expectation of confidentiality, it may not be feasible to address the complaint while at the same time preserving confidentiality. If that is the case, the public body should notify the individual that in order to proceed, it may be necessary to disclose the details, including the identity of the complainant, to the party about whom the complaint was made or to others, as the situation might require.*

*[26] Depending on the circumstances, it might be quite feasible to provide such notification by letter, fax, e-mail or even telephone. The individual is then at least forewarned, and can make an informed decision whether or not to consent to such disclosure in order to pursue the complaint. For example, in a recent Ontario case, when it was discovered that there was some confusion about the process to be followed when a matter was brought to a town council, the town adopted a form letter, to be sent to all individuals making written requests or submissions. The letter advises the writer of the process to be followed, including the disclosure of details, possibly including personal information, at public council meetings. [See Ontario OIPC Privacy Complaint Report MC-050015-1 (Town of Cochrane), January 13, 2006.]*

Consent was not sought from the Complainant and they were not notified that their personal information would be shared. This does not mean that the disclosure of their personal information was contrary to the Act in this particular case, however with consent and/or notification the Complainant would have understood that their personal information would have to be shared in order to properly address the complaints in the Letter.

- [34] Despite contacting and soliciting input from the public bodies, the Complainant and the Chief of the Eastport Fire Department, my investigation was not able to determine which person or persons provided the Letter to the Chief of the Fire Department. The submissions

of the Town of Eastport in particular note that the Joint Council, to which the Letter was addressed, numbers approximately 43 elected members. To this number must be added, at a minimum, staff members from each of the member towns. Some of these individuals serve with the Fire Department or have close relatives who are members, in some cases with senior roles, in the Fire Department. Such potential conflicts of interest are compounded when, in smaller communities, a town may lack alternative staff to whom duties can be delegated in the case of a conflict of interest.

[35] As noted above, the Fire Chief told the Complainant that the Town of Eastport disclosed the Letter directly to him. The Fire Chief, as part of this investigation, was asked and refused to say how he came into possession of the Letter. I decline to make any finding on that issue. Although this Report is unable to determine who shared the Letter, my investigation has revealed significant differences in how the involved public bodies collect, protect, use and disclose personal information and recommendations for improved practices are warranted.

[36] Municipalities are in need of training. This is a theme running through many of this Office's reports involving local government bodies. In a time of fiscal challenge, addressing the largest possible audience gathered at one location would be ideal.

## V CONCLUSION

[37] In summary, I conclude that:

- (a) The Letter contained the Complainant's personal information;
- (b) The *ATIPPA, 2015* may have permitted the disclosure of the Letter, had steps been taken to limit disclosure to the minimum necessary, and only to those individuals to whom it was necessary to disclose in order to address the issues raised in the Letter. Further, best practices require that complainants expressing expectations of confidentiality should be contacted prior to using or disclosing personal information in the course of addressing their complaints; and

- (c) Measures to safeguard personal information vary across the local government bodies and improvements are required.

## VI RECOMMENDATIONS

[38] I recommend, in accordance with section 76(2), that all five towns take the following steps:

- (a) The towns should work with the Department of Justice's Access to Information and Protection of Privacy Office, with reference to that Office's ATIPP Guide for Municipalities, to ensure that they are able to recognize instances where personal information may be used or disclosed and the proper means of doing so. Particular attention should be paid to developing formal policies for balancing the protection of personal information with the need to provide town councils with information necessary for conducting town business.
- (b) The towns should continue to maintain a distinction between council and the role of the Town Clerk, including limiting access to e-mail and files to the Town Clerk. It is helpful that in all cases the Town Clerk also serves as the town's access and privacy coordinator and is well-placed to recognize privacy concerns. That said, where necessary, Town Clerks and town councils should be able to recognize potential conflicts of interest and be prepared to delegate duties for protecting personal information to other staff or council members who may be free of a conflict.

[39] As set out in section 78(1)(b), the respective heads of the Town of Eastport, the Town of Happy Adventure, the Town of Salvage, the Town of Sandringham and the Town of Sandy Cove must give written notice of his or her decision with respect to these recommendations to the Commissioner and to any person who was sent a copy of this Report (in this case the Complainant) within 10 business days of receiving this Report.

[40] Dated at St. John's, in the Province of Newfoundland and Labrador, this 13<sup>th</sup> day of October, 2017.

Donovan Molloy, Q.C.  
Information and Privacy Commissioner  
Newfoundland and Labrador

