



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report P-2020-002

August 31, 2020

Town of Howley

Summary:

Two complainants filed complaints with this Office alleging that their privacy had been breached when the Mayor of the Town of Howley improperly disclosed information about their out-of-province travel and isolation requirements in a series of posts to a Facebook group as well as emails to Council members and Town staff. These disclosures were made in the context of the 2020 COVID-19 pandemic and were ostensibly made in order to protect the public. While the Province of Newfoundland and Labrador had announced a public health emergency on March 18, 2020 and had instituted a number of public health orders, including restrictions on travel and the requirement for returning travelers to self-isolate, the Town of Howley had no role in administering or enforcing these emergency powers. As such, the Town had no valid reason for disclosing personal information in this manner. Recommendations were made to the Town to review its social media policies.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, section 2, 9, and 68.

[Emergency Services Act](#), SNL 2008, c. E-9.1, section 2

[Public Health Protection and Promotion Act](#), SNL 2018, c. P-37.3, sections 13 and 27

Other Resources:

[Don't Blame Privacy – What to Do and How to Communicate in an Emergency; A Framework for the Government of Newfoundland and Labrador to Assess Privacy-Impactful Initiatives in Response to COVID-19](#); [Use of Social Media - Quick Tips](#); and, [Special Measures Order \(Amendment No. 2\)](#).

I BACKGROUND

- [1] The ongoing COVID-19 pandemic has presented numerous concerns for public bodies and health officials worldwide. Newfoundland and Labrador has been no exception, since the first case of COVID-19 was detected in mid-March, 2020. Many people are understandably concerned about their health and there is pressure on public bodies to establish and enforce effective public health measures in the face of a highly infectious virus. Many public health measures involve the collection, use and disclosure of personal information – contact tracing efforts, exchanging statistics between health authorities and other public bodies, and the involvement of law enforcement in enforcing public health measures, to name only a few. While COVID-19 is a serious public health concern, public bodies must remain aware that the collection, use or disclosure of personal information must continue to comply with the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”). The complaints addressed in this report stem from actions taken by the head of a municipal government, purportedly in response to the COVID-19 pandemic, and deal with how that public body collected, used and disclosed personal information about residents of the Town of Howley.
- [2] In a series of Facebook posts made on March 21 and 22, 2020, the Mayor of the Town of Howley publicly disclosed conversations he had had with several residents. By doing so, he disclosed the names of several individuals and their recent travel history, as well as comments on whether they were supposed to be in self-isolation following their return to the province. On March 25, 2020, in an email to Town Councilors and staff, the Mayor named three residents of the Town and further referenced their travel history and commented on their health care status.
- [3] On April 6, 2020, the Office of the Information and Privacy Commissioner received a complaint against the Town of Howley in connection with the March 25, 2020 email. On June 19, 2020, this Office received a further complaint which also included the posts on Facebook. These complaints were communicated to the Town of Howley and we received submissions on behalf of the Town on July 15, 2020.

II PUBLIC BODY'S POSITION

- [4] The Mayor of the Town of Howley had been particularly outspoken at the outset of the COVID-19 pandemic, announcing on March 20, 2020 that the Town's volunteer fire department would be unable to respond to health emergencies because of a lack of personal protective equipment. On that date, he also raised concerns about travelers returning to the province and to the Town, alleging that there were individuals who were breaking a so-called quarantine. In further statements to the media reported on March 21, 2020, the Mayor of the Town of Howley further expressed his concerns about the risks of COVID-19 and alleged that individuals in the community were refusing to self-isolate.
- [5] Following the March 21 and March 22 Facebook posts and the March 25 email to Council and staff, the Mayor took the position that these did not constitute an improper disclosure of personal information and that no privacy breach had occurred. The Mayor further takes the position that the Facebook page in question was not an official Town Facebook page and therefore, presumably, he was posting in his capacity as a private individual and not on behalf of the public body.
- [6] Sometime in late March, 2020, the offending Facebook posts were removed from Howley NL Facebook group. Soon after, the Mayor announced that Howley NL Facebook group would be removed in its entirety and a new Facebook group, "The Town of Howley" would now be the official Facebook group for the Town.
- [7] The Town advises that at a Council meeting on June 11, 2020, the Town Council formed a committee to review the Town's policies and practices regarding the use of social media.

III DISCUSSION

- [8] We should be absolutely clear that *ATIPPA, 2015* does not prevent the collection, use or disclosure of personal information that is necessary in order to respond to and manage an emergency. Rather, *ATIPPA, 2015*, as well as the *Personal Health Information Act*, provides significant tools for public bodies and custodians of personal health information to collect,

use and disclose personal information in an emergency context. As the COVID-19 pandemic became a growing public health concern in March, 2020, this Office released a guidance document for public bodies to assist with understanding the interaction between *ATIPPA, 2015* and the province's emergency powers: "Don't Blame Privacy – What to Do and How to Communicate in an Emergency". This Office further provided "A Framework for the Government of Newfoundland and Labrador to Assess Privacy-Impactful Initiatives in Response to COVID-19".

[9] With regard to the Town of Howley's authority to use or disclose personal information in its custody or control, sections 66 and 68 apply:

66. (1) *A public body may use personal information only*

- (a) *for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose as described in section 69;*
- (b) *where the individual the information is about has identified the information and has consented to the use, in the manner set by the minister responsible for this Act; or*
- (c) *for a purpose for which that information may be disclosed to that public body under sections 68 to 71 .*

(2) *The use of personal information by a public body shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is used.*

68. (1) *A public body may disclose personal information only*

- (a) *in accordance with Part II;*
- (b) *where the individual the information is about has identified the information and consented to the disclosure in the manner set by the minister responsible for this Act;*
- (c) *for the purpose for which it was obtained or compiled or for a use consistent with that purpose as described in section 69;*
- (d) *for the purpose of complying with an Act or regulation of, or with a treaty, arrangement or agreement made under an Act or regulation of the province or Canada;*

- (e) *for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information;*
- (f) *to an officer or employee of the public body or to a minister, where the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the officer, employee or minister;*
- (g) *to the Attorney General for use in civil proceedings involving the government;*
- (h) *for the purpose of enforcing a legal right the government of the province or a public body has against a person;*
- (i) *for the purpose of*
 - (i) *collecting a debt or fine owing by the individual the information is about to the government of the province or to a public body, or*
 - (ii) *making a payment owing by the government of the province or by a public body to the individual the information is about;*
- (j) *to the Auditor General or another person or body prescribed in the regulations for audit purposes;*
- (k) *to a member of the House of Assembly who has been requested by the individual the information is about to assist in resolving a problem;*
- (l) *to a representative of a bargaining agent who has been authorized in writing by the employee, whom the information is about, to make an inquiry;*
- (m) *to the Provincial Archives of Newfoundland and Labrador , or the archives of a public body, for archival purposes;*
- (n) *to a public body or a law enforcement agency in Canada to assist in an investigation*
 - (i) *undertaken with a view to a law enforcement proceeding, or*
 - (ii) *from which a law enforcement proceeding is likely to result;*
- (o) *where the public body is a law enforcement agency and the information is disclosed*
 - (i) *to another law enforcement agency in Canada , or*
 - (ii) *to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority;*

- (p) *where the head of the public body determines that compelling circumstances exist that affect a person's health or safety and where notice of disclosure is given in the form appropriate in the circumstances to the individual the information is about;*
- (q) *so that the next of kin or a friend of an injured, ill or deceased individual may be contacted;*
- (r) *in accordance with an Act of the province or Canada that authorizes or requires the disclosure;*
- (s) *in accordance with sections 70 and 71;*
- (t) *where the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 40;*
- (u) *to an officer or employee of a public body or to a minister, where the information is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or minister to whom the information is disclosed; or*
- (v) *to the surviving spouse or relative of a deceased individual where, in the opinion of the head of the public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy.*

(2) The disclosure of personal information by a public body shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.

Several of these provisions could apply in the context of an emergency to allow a public body to use or disclose personal information in order to protect public health.

[10] Further, section 9 requires a public body to disclose information, including personal information, if it is aware of a risk of significant harm to the health or safety of the public:

9(3) Whether or not a request for access is made, the head of a public body shall, without delay, disclose to the public, to an affected group of people or to an applicant, information about a risk of significant harm to the environment or to the health or safety of the public or a group of people, the disclosure of which is clearly in the public interest.

(4) Subsection (3) applies notwithstanding a provision of this Act.

(5) Before disclosing information under subsection (3), the head of a public body shall, where practicable, give notice of disclosure in the form appropriate in the circumstances to a third party to whom the information relates.

[11] Within Newfoundland and Labrador legislation, the *Public Health Protection and Promotion Act* (“PHPPA”) provides for the declaration of a public health emergency by the Minister, on the advice of the Chief Medical Officer of Health. A public health emergency is defined as:

- (y) “public health emergency” means an occurrence or imminent threat of one of the following that presents a serious risk to the health of the population
- (i) a communicable disease,
 - (ii) a health condition,
 - (iii) a novel or highly infectious agent or biological substance, or
 - (iv) the presence of a chemical agent or radioactive material;

[12] On the declaration of a public health emergency, PHPPA authorizes the Chief Medical Officer of Health to introduce measures to protect the health of the population. Such measures may involve the restriction of rights and freedoms, and extend to the collection and disclosure of personal health information. However, such alterations to everyday rights and freedoms are limited under section 13 of PHPPA to what is reasonably required in the circumstances.

[13] On March 18, 2020, the Government of Newfoundland and Labrador declared a public health emergency pursuant to section 27 of PHPPA. This declaration provided for, among other things, the closure of public offices and businesses and a requirement that those returning from outside of the province self-isolate for 14 days to protect against the spread of COVID-19.

[14] The present complaints concern the actions of the Town of Howley, and therefore the issues to be determined are whether the social media posts and email disclosed personal information and whether the Town had any justification for doing so.

Email to Council and Staff

[15] On March 25, the Mayor emailed Council and staff advising them of a recent conversation with an RCMP officer. The email refers to recent travel by two named residents of the Town, their movements within the community since their return to Newfoundland and Labrador, and whether they are required to self-isolate:

“Good Evening,

I had a call fr [named RCMP officer] around 730.

He spoke with [named resident] and she did go shopping upon arrival fr her trip to [out of country location]. Since shopping, she and [named resident] are self-isolating. She is required to file an Official Report to Public Health.

He also spoke with [named resident]. [He] feels he is not a carrier as he has shown no symptoms. If he had been in isolation, it would have ended today. [He] is adamant he is been [sic] harassed. He is also required to file a report.

I will be following up with Western Health to confirm the reports were filed. I had a courtesy call fr the CEO of Western Health today.”

[16] Personal information is defined at section 2(u) of ATIPPA, 2015:

2. In this Act

...

(u) personal information" means recorded information about an identifiable individual, including

- (i) the individual's name, address or telephone number,*
- (ii) the individual's race, national or ethnic origin, colour, or religious or*
- (iii) the individual's age, sex, sexual orientation, marital status or family*
- (iv) an identifying number, symbol or other particular assigned to the individual,*
- (v) the individual's fingerprints, blood type or inheritable characteristics,*
- (vi) information about the individual's health care status or history, including a physical or mental disability,*
- (vii) information about the individual's educational, financial, criminal or employment status or history,*
- (viii) the opinions of a person about the individual, and*
- (ix) the individual's personal views or opinions, except where they are about someone else;*

[17] The above list is not exhaustive, but the use of individuals' names in the email and references to their health care status or history is sufficient to find that it contains personal information of three named individuals.

Facebook Posts

[18] On March 21, 2020, the Mayor posted the contents of a text message received from a resident of the Town to the Facebook group "Howley NL". This message noted the resident's dissatisfaction with the Mayor's leadership. Later that evening, the Mayor made a further post, which included screenshots of a conversation with other residents of the Town, one of whom alleges that another resident is supposed to be in isolation.

[19] As noted above, an individual's name is their personal information and by publicizing the name of the author of the text message in the first Facebook post, the Mayor disclosed that individual's personal information. The latter post, containing an individual's name and suggesting that they should be in isolation, also discloses personal information.

[20] On March 22, 2020, the Mayor made another post, attaching screenshots of a conversation with the individual, asking if they were self-isolating following a trip out of the province. In the conversation, the Mayor also references the recent travel of another resident (who is referenced by her first name).

[21] An individual's name and their potential to have become infected with COVID-19 is personal information.

[22] Finally, on March 27, 2020, the Mayor posted:

"Privacy Complaint"

A privacy complaint has been received with respect to recent posts on this site of a person who returned fr out of country and would not voluntarily self-isolate which would have ended on March 25th.

That person was contacted by police and that person has been directed to submit a Public Health Complaint. Once received, Western Public Health will be conducting follow up.”

[23] As noted above, this Office did not receive privacy complaints regarding the social media posts until April. However, the ATIPP Office at the Department of Justice and Public Safety did become involved on March 26 and provided advice to the Town which was circulated to the Mayor and Council on March 27. It appears that the reference to a “privacy complaint” is likely in connection with that intervention. Given the amount of personal information disclosed previously, the comments in the March 27 post are about an identifiable individual and therefore constitute a disclosure of personal information.

[24] There is some disagreement about the status of the “Howley NL” Facebook group and whether it can be considered an official social media account of the Town. The Mayor denies that it is an official Town account. However, there is evidence that it was regularly used to announce Town business. Additionally, the Mayor is identified in various screenshots as an “administrator” for the group, a role which would give him control over the group’s membership, the ability to approve (or remove) posts, and generally manage the group’s settings. Evidence was also provided that an employee of the Town was also an administrator of the group and management of the group was part of their duties as an employee. It appears that, for all intents and purposes, the “Howley NL” Facebook group was controlled and operated by the Town of Howley. Subsequent developments on March 31, 2020, when the Mayor announced the dissolution of the “Howley NL” group and the creation of a new official group entitled “The Town of Howley” support this finding.

[25] Social media is an increasingly popular platform for public bodies to communicate with the public, especially smaller public bodies such as municipalities, as it can provide a user-friendly and cost-effective online presence to share information with residents and other stakeholders. However, social media comes with many risks and all public bodies would be well-advised to ensure they have proper policies and practices in place for their use of social media and are mindful of the information that they post to very public platforms. Our Office

has produced guidance on the use of social media by public bodies called Use of Social Media – Quick Tips, which is available on our web site.

[26] In addition to questions about the status of the Facebook group, there could also be some debate about whether the Mayor was acting in an official or private capacity when sending the March 25 email or making the Facebook posts. While it is possible for a careful senior employee or elected official of a public body to engage in social media in a strictly personal capacity without their actions being attributed to their respective public body, in this case it appears that his actions were undertaken as the Mayor of the Town of Howley rather than as a private citizen. The earlier March 21 Facebook post discloses correspondence from a resident, the subject of which is the Mayor's performance of his duties. The March 25 email references conversations with the RCMP and the Western Regional Health Authority and if personal information was indeed conveyed to the Mayor from those organizations, it would have certainly been by virtue of his position as Mayor. By posting on a Facebook group perceived to be an official outlet of the Town without any qualification or disclaimer that he was doing so in a private capacity, the Mayor's posts could only be attributed to the public body.

Analysis

[27] Having concluded that all three Facebook posts and the email to Council and staff contained personal information, what remains is the question of whether these were proper uses or disclosures of personal information pursuant to legislation. *ATIPPA, 2015* provides for the use of personal information within a public body, as well as the disclosure of personal information to other public bodies, individuals, or the public at large. We consider the March 25 email to be a use as it was addressed to employees and elected officials of the Town of Howley, and therefore governed by section 66. The Facebook posts, as they broadcast personal information to the public, are disclosures and governed by section 68.

[28] In terms of a use of the personal information in the March 25 email (being individuals' names and references to their health care status or history), there is no evidence that the named individuals had consented to this use of their personal information in this manner

(section 66(1)(b)) or any argument put forward that this use was consistent with the purpose for which it was obtained (section 66(1)(a)). Section 66(1)(c) provides that a public body may use personal information for a purpose for which that information could also be disclosed to that public body under section 68. Therefore, the remainder of our analysis will look at the email and the Facebook posts in the context of section 68.

[29] The Town did not cite any particular provisions, but the most relevant which would appear to apply to the use of personal information in the email and the disclosure via the Facebook posts are sections 68(1)(f), (n), and (p):

(f) to an officer or employee of the public body or to a minister, where the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the officer, employee or minister;

...

(n) to a public body or a law enforcement agency in Canada to assist in an investigation

- (i) undertaken with a view to a law enforcement proceeding, or*
- (ii) from which a law enforcement proceeding is likely to result;*

...

(p) where the head of the public body determines that compelling circumstances exist that affect a person's health or safety and where notice of disclosure is given in the form appropriate in the circumstances to the individual the information is about;

[30] While the province was under a public health emergency at the time of these disclosures of personal information, and there were indeed public health orders requiring self-isolation for individuals returning from out-of-province travel, there was no role for the Town of Howley in enforcing these orders and no employee or elected official at the Town of Howley required this information for the performance of their duties. Law enforcement, regional health authorities and the Department of Health and Community Services certainly did have key roles to play in organizing and executing the province's response to the COVID-19 pandemic and, from the content of the email and the Facebook posts, it is apparent that these authorities were already aware of the circumstances of the named individuals. If they were not already aware, it may have been permissible, pursuant to section 68(1)(f) or (n) for the Town to disclose personal information to those other public bodies in a confidential manner and limiting the disclosure

to the minimal amount of information necessary. Therefore, the email and Facebook posts were not permissible uses or disclosures under sections 68(1)(f) or (n).

[31] While section 68 is generally concerned with disclosures to other public bodies, section 68(p) could allow a public body to disclose personal information to a private individual or even to the public where the public body determined that compelling circumstances exist that affect a person's health or safety. Such circumstances could certainly exist in the context of a pandemic, though it would be advisable for a public body to work with other authorities first before resorting to public disclosure of personal information. The provision also requires that notice be given to the individual the information is about. While the Facebook posts were public, we cannot consider this to have been appropriate notice. Furthermore, even presuming that compelling circumstances existed in this case and that the Facebook posts were made in the interests of protecting public health, they do not provide any guidance as to how members of the public would use this information to protect themselves. The Mayor's email and Facebook posts cannot be justified by section 68(1)(p).

[32] Finally, with regard to section 9 and the duty imposed on a public body to disclose information about a risk of significant harm to the public, we note that the Town has not claimed that it was applying this provision of *ATIPPA, 2015*. Further, at the time the Facebook posts were made and the email sent, the Western Regional Health Authority had only one case of COVID-19, which would refute any claim that there was a risk of significant harm to the residents of the Town of Howley which necessitated the sharing of personal information via social media. Compared to the Chief Medical Officer of Health's response to a cluster of more than 100 cases connected to a St. John's funeral home in Special Measures Order (Amendment No. 2), where a threat to public health was announced and measures taken to contain that threat without any disclosure of personal information to the public, the Mayor's actions are shown to be particularly unnecessary.

V CONCLUSIONS

[33] After a review of the Facebook posts and the email, and of submissions from the Town, we conclude that the Mayor of the Town of Howley disclosed personal information in contravention of *ATIPPA, 2015* in the March 25 email and in at least three Facebook posts. While anxiety about the ongoing COVID-19 pandemic is understandable, public bodies must still protect personal information unless *ATIPPA, 2015* provides for its disclosure. In the present matter, we do not see any provision of *ATIPPA, 2015* which would support the Mayor's actions.

[34] In this case the Mayor took it upon himself to use and disclose personal information that had come into his possession, by virtue of him being the Mayor, in an effort to enforce a special emergency order. However, there was no legislative basis for the use of this information in this way and therefore the Mayor was acting outside of his lawful mandate. The most that the Mayor would have been authorized to do with this information in these circumstances would be to disclose it to those who did have legal authority to use and disclose it, such as Western Regional Health Authority or the Department of Health and Community Services.

VI RECOMMENDATIONS

[35] Under the authority of section 76(2) of the *ATIPPA, 2015*, I recommend that the Town take steps to:

- Complete its review of its social media policies and practice as initiated at its June 11, 2020 council meeting. This review should be completed within 90 days of receipt of this Report and the new policies and practices submitted to this Office for review.
- Put into effect policies and procedures for the protection of personal information generally and in accordance with the *ATIPPA, 2015*. This should include putting into force its privacy policy and communicating and providing copies of this to staff and Council;

- Arrange for all Town staff and elected officials to receive *ATIPPA, 2015* training within 90 days;

[36] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Town of Howley 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.

[37] Dated at St. John's, in the Province of Newfoundland and Labrador, this 31st day of August 2020.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador