



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**Report P-2021-001**

**February 17, 2021**

**Town of Northern Arm**

**Summary:**

The Town of Northern Arm circulated a partially redacted copy of a harassment investigation report to some residents. The Complainant alleged that the Town had breached his privacy by doing so. The Commissioner found that while the disclosure of some of the personal information of the Complainant was justified in the circumstances, some other personal information of the Complainant and others had been improperly disclosed, contrary to the privacy provisions of the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)*. The Commissioner recommended that the Town acknowledge the breach of privacy, submit a privacy breach report to this Office, develop an appropriate privacy policy and consider privacy training for Town councillors and staff.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#),  
S.N.L. 2015, c. A-1.2, ss. 2, 62, 66, 68.

**Authorities Relied On:**

NL OIPC Reports [P-2017-005](#), [P-2020-001](#).

## I BACKGROUND

- [1] An employee of the Town of Northern Arm (the “Town”) filed a harassment complaint against a Town councillor. The Town retained an outside investigator to conduct the investigation. The investigation report concluded that the allegation of harassment was well-founded, and recommended that the councillor undergo anti-harassment training and that he be removed from Council.
- [2] The Town decided to accept the report, and to provide abridged copies of the report, omitting the summaries of witness interviews (the “Abridged Copies”), to a number of residents who requested it.
- [3] Subsequently realizing that there were privacy issues, the Town retrieved the Abridged Copies from the recipients, and replaced them with copies that, in addition to omitting the witness interviews, had the names of the parties and witnesses redacted (the “Redacted Copies”). The Redacted Copies were also provided to additional requesters. The Town did not, however, file a privacy breach report with our Office.
- [4] The Complainant filed a complaint with this Office, alleging that the Town had breached his privacy. As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## II PUBLIC BODY’S POSITION

- [5] During the course of the investigation the Town acknowledged that it had breached the Complainant’s privacy, and the privacy of other people, by circulating the details of the report outside of Council.

## III COMPLAINANT’S POSITION

- [6] The Complainant requests “the maximum remedy that can be created” including a public apology by the Town.

- [7] The Complainant argues that he is entitled to know the names of the people that received either the Abridged Copies, or the Redacted Copies, of the report from Council.
- [8] The Complainant states that it is hard to believe that Council retrieved the Abridged Copies from all the recipients, that a motion of Council would have been required, and that this is not recorded in any minutes of the meetings of Council.
- [9] The Complainant made additional arguments about the conduct of the harassment investigation, the mandate of the investigator and the actions taken by the Town in response to the investigation report.

#### IV ISSUES

- [10] The outstanding issues to be resolved in this privacy complaint are:
1. Whether the Town breached the Complainant's privacy as alleged by the Complainant, and
  2. Whether the Town has responded adequately to the Complaint.

#### V DECISION

- [11] A little more background is in order. An employee of the Town of Northern Arm made a complaint of harassment against the Complainant earlier in the year, and the Occupational Health and Safety Division ("OHS") of Digital Government and Service NL directed that the Town conduct an investigation. The Town retained an independent investigator to conduct the investigation.
- [12] The investigator's report was delivered to the Town on July 17, 2020. The report was 24 pages long, of which about 18 pages were summaries of the interviews with witnesses. The report concluded that the allegation of harassment was well-founded and recommended, among other things, that the Complainant be removed from Council.

[13] Although the investigation was conducted at the recommendation of OHS, it was commissioned by the Town and the Town, not OHS, was responsible for deciding whether to accept the recommendations in the resulting report. At a meeting of Council, the Town decided to accept the report and its recommendations and also decided to provide copies of the report to anyone who requested it.

[14] A number of residents did request the report and each of them was provided an Abridged Copy. These copies of the report consisted of approximately 6 pages and contained the introduction, conclusions and recommendations. They did not include the witness interviews. These copies did, however, include the names of the parties to the complaint and of witnesses who were interviewed, as well as certain other information about many of those individuals.

[15] Subsequently, the Town realized that there were privacy issues with releasing the partial report as it had done. The Town therefore retrieved the Abridged Copies from all of the recipients, and provided them instead with the Redacted Copies which contained the same 6 pages and additionally had the names of the parties and witnesses redacted. The Redacted Copies were provided to other people who requested them.

[16] The privacy complaint alleges that the Complainant's personal information has not been properly protected, has been improperly used, and has been improperly disclosed by the decision of the Town to provide the report to other people.

[17] The *Access to Information and Protection of Privacy Act, 2015* ("ATIPPA, 2015") in section 2 defines personal information as "information about an identifiable individual". The report as initially disclosed to a number of residents contained the names of the parties and witnesses. Even the second version of the report, with the names of parties and witnesses redacted, still contained some of the Complainant's (and other people's) personal information. Northern Arm is a relatively small town, and conflicts involving residents and members of Council have been ongoing for a number of years. From the background information provided to us, we conclude that some of those conflicts have been notorious, and most residents are aware of the names and the involvements of the main

participants. We conclude that residents who received redacted copies of the report already knew that there had been a harassment complaint, and who the parties were. Certainly anyone who read a copy of the redacted report could see that it concerned a Town employee and a member of Council, and it would be easy for anyone to then identify those parties.

[18] It is clear, then, that even though names of individuals were redacted, some of the content of the report was information about identifiable individuals, of whom the Complainant was one. Therefore some of the Complainant's personal information was disclosed. That is not the end of the matter, however, because *ATIPPA, 2015* provides that while some disclosures of personal information are an unreasonable invasion of privacy, other disclosures are not.

[19] First, under section 62 of *ATIPPA, 2015*, a public body may collect information, such as the information contained in the report, if it is authorized under a statute, or necessary for an operating program or activity of the public body. Conducting a harassment investigation involving an employee, and collecting all of the information necessary to do so, would fall into those categories. Therefore it is clear that the Town was authorized to collect the personal information contained in the report.

[20] Second, under section 66 of the *Act*, a public body may use information for the purpose for which it was collected, or for a purpose consistent with that. In the present case, the Town was justified in using the information in the report, by circulating the entire report to members of council and to the parties to the complaint. The parties were entitled to be provided with copies of the report, and council members had to be provided with copies in order to fulfil their responsibility to make decisions in response to the recommendations in the report.

[21] Third, under section 68 of the *Act*, a public body may also disclose information for the purpose for which it was collected, or a consistent purpose. In the present case, it is clear that the Town is responsible for making decisions on serious matters involving employees and, under the *Municipalities Act*, it is required to make those decisions in public meetings. Therefore, at a minimum, the Town was required to pass a motion in a public meeting, deciding whether or not to accept the report. That motion would necessarily have to make reference to the harassment investigation following a complaint by an employee against

a councillor. In addition, any action by the Town to remove a councillor, or to take action on any other recommendation, would necessarily have to be made (or at least ratified) in a public meeting. Therefore all of that information had to be disclosed to the public in one form or another. To that extent, such a disclosure would have been permitted by *ATIPPA, 2015*.

[22] However, section 68(2) of the *Act* provides that even a permitted disclosure of information must be limited to the minimum amount necessary to accomplish the purpose. Therefore wider disclosure of the details of the report, such as the names of parties and witnesses, outside of Council is more difficult to justify under *ATIPPA, 2015*, and we conclude that in the present case it was not justified. It was not necessary for the entire report to be tabled or discussed in detail at a public meeting. Municipalities are permitted to hold private meetings in the absence of the public for certain purposes, and protecting people's privacy is one of them. The report and its recommendations could have been discussed and debated at a private meeting. Then only a brief motion, as explained above, would have to be made in the public meeting, to ratify the decision made in the private meeting.

[23] The full report therefore ought to have remained confidential, except to the parties and councillors, and only the minimum information necessary for the Town to act on the report ought to have been disclosed to the public.

[24] The disclosure was more serious because it was not only the Complainant's personal information that was disclosed in contravention of *ATIPPA, 2015*. The first version of the report that went out (the Abridged Copy) included the names of councillors, other Town staff, and witnesses as well. Even the second version of the report (the Redacted Copy), with all of the names redacted, still made it possible for well-informed residents to identify at least some of those other individuals by their titles or other contextual information.

[25] On the other hand, the seriousness of the violation of privacy is mitigated, especially in the Complainant's case, by the fact that most residents of Northern Arm were already aware of the conflict, and the Town had to make public the conclusions and main recommendations of the report in any case. In the result, the circulation of even the Abridged Copy did not disclose a lot more of the Complainant's personal information beyond what was otherwise necessary.

Furthermore, the additional personal information of the Complainant that was unnecessarily disclosed was similar to the information that was already public, and was not appreciably more sensitive information.

[26] The Complainant argued that he should be entitled to know the names of the people that received either Abridged Copies or Redacted Copies of the report. In the present case, the disclosure of those names to the Complainant or anyone else would constitute a disclosure of those people's personal information. The rules for such disclosures are set out in *ATIPPA, 2015*, in particular in section 68. In our view, neither section 68 nor any other provision of the *Act* would permit the disclosure of those names to the Complainant in the present case, and such disclosure would therefore constitute a breach of their privacy.

[27] The Complainant also argues that it is "hard to believe" that the Abridged Copies of the report were retrieved from the people who had received them. However, the evidence provided to our Office is that this was the case and there is no evidence provided to us to suggest otherwise. It appears that the number of copies to be recovered was relatively small and doing so was simply an administrative measure. There is no reason to think that recovering the copies would require formal action by Council.

[28] Finally, the arguments made by the Complainant about the conduct of the harassment investigation, the mandate of the investigator, and the response of Council to the investigation report are all matters that are outside the jurisdiction of this Office, which is limited to the issues in the investigation of the privacy complaint.

[29] People who stand for public office have to expect that their actions in office are to a large extent public, and therefore are exposed to greater public scrutiny than they would be in private life. In particular, there is an obvious public accountability interest in residents being informed that an elected official has had a complaint of harassment made against him, that the complaint has been investigated, and that the Town has taken action in response to recommendations in the investigation report. The public interest in accountability outweighs any loss of privacy that might be required by the disclosure of the minimum necessary information to fulfil that purpose.

[30] Having reached these conclusions during the course of our investigation, our Office proposed to the Town and the Complainant that they agree to resolve this complaint on the basis of our conclusions and a number of recommendations that we thought were appropriate. The Town accepted the recommendations, but the parties were unable to reach an agreement to resolve the matter. As a result, we have issued the present Report.

[31] There is no evidence that the disclosures by the Town were made maliciously or with any improper intent. On the contrary, the fact that the Town first redacted the witness interview details, and later the names of individuals, indicates good faith. Rather, a lack of training and experience appears to have been the main contributors to this privacy breach and the failure of the Town to report it to this Office. Under the circumstances the development of a privacy policy, and undertaking privacy training for councillors and staff, are appropriate remedies, but we do not consider that a public apology is necessary or helpful.

[32] Many smaller municipalities in Newfoundland and Labrador do an admirable job of providing municipal services despite their size and modest resources. However, smaller bodies often have very little experience with access and privacy matters. It can easily happen that a town does not clearly think through the privacy implications associated with conducting a harassment investigation or other internal matters, particularly where it may be the first one they have faced. Other towns, then, may find themselves in similar circumstances to the Town of Northern Arm. We hope that this Report might help illustrate some things that other towns might keep in mind when undertaking investigations and deciding what information to disclose.

## VI RECOMMENDATIONS

[33] Under the authority of section 77 of *ATIPPA, 2015* I therefore recommend:

- (a) that the Town of Northern Arm acknowledge that circulating the details of the report outside of Council breached the Complainant's privacy, and the privacy of other people;
- (b) that the Town of Northern Arm submit an appropriate privacy breach report to our Office;



(c) that the Town of Northern Arm develop an appropriate privacy policy, in consultation with the ATIPP Office, Department of Justice and Public Safety, and

(d) that the Town of Northern Arm consider privacy training for members of Council and Town staff, available from our Office or from the ATIPP Office.

[34] As set out in section 78 of *ATIPPA, 2015*, the head of the Town of Northern Arm 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.

[35] Dated at St. John's, in the Province of Newfoundland and Labrador, this 17<sup>th</sup> day of February, 2021.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador