

Report A-2013-011

July 9, 2013

Royal Newfoundland Constabulary

Summary:

The Applicant applied under the Access to Information and Protection of Privacy Act ("the ATIPPA") to the Royal Newfoundland Constabulary (the "RNC") for access to the file regarding her husband's death, including the photos taken at the scene. The RNC refused access to some of the responsive records citing section 30 of the ATIPPA (disclosure harmful to personal privacy). The RNC later released some of the previously withheld information during the informal resolution process but maintained their position on other records. The Commissioner determined that the RNC had properly applied section 30 of the ATIPPA. As a result the Commissioner made no recommendations.

Statutes Cited:

Access to Information and Protection of Privacy Act, S.N.L. 2002, c. A-1.1, as amended, sections 30 and 12(2)(c).

I BACKGROUND

[1] The Applicant wrote to the Royal Newfoundland Constabulary (the "RNC") on April 26, 2012 asking for a complete copy of the investigation file into her husband's death, including photographs. The RNC responded to this request as if it had been made under the *Access to Information and Protection of Privacy Act* (the "ATIPPA" or "Act") even though it was not in the prescribed form.

The RNC responded to the request on June 7, 2012 and granted partial access to the records. They denied access to some of the responsive records pursuant to section 30 of the *ATIPPA*. In a letter dated June 15, 2012 and received in this Office on June 21, the Applicant asked for a review of the decision of the RNC. The Applicant also registered several other concerns in her letter about the handling of this incident by the RNC, however, they are beyond the jurisdiction of this Office and will not be discussed in this Report.

[3] Attempts to resolve this Request for Review by informal resolution led to some further releases of records but ultimately the matter was not resolved, and by letters dated March 12, 2013 both the Applicant and the RNC were advised that the Request for Review had been referred for formal investigation pursuant to subsection 46(2) of the *ATIPPA*. As part of the formal investigation process, both parties were given the opportunity to provide written submissions to this Office in accordance with section 47.

II PUBLIC BODY'S SUBMISSION

[4] The RNC provided its submission in correspondence dated March 22, 2013. In relation to section 30, the RNC explains:

In relation to this request for information, there is a concern on the part of Chief Johnston for the protection of privacy and dignity of the deceased person, [a named individual]. As a result of this concern, items in the police file have not been disclosed to [the Applicant] that, pursuant to Section 30(1) of the ATIPPA, Chief Johnston is of the opinion would result in an unreasonable invasion of the deceased privacy if these items were disclosed.

[5] The RNC went on to state that:

Further, Chief Johnston is of the view that to disclose the vetted items in this case to [the Applicant], particularly the vetted photographs, due to the nature of the photographs, would result in a threat to [the Applicant's] health and safety, and, therefore, the refusal to disclose these photos is also justified pursuant to Section 12(2)(c) of the ATIPPA.

III APPLICANT'S SUBMISSION

[6] A written submission was received on March 25. It set out many detailed concerns about the conduct of the RNC throughout its investigation. As stated above, many of these issues are beyond the scope of this Office and are not reiterated here. The relevant portions of the Applicant's submission state that she has repeatedly requested to see the crime scene photos:

...on the morning of April 19th, 2012...[I] was told by [named constable] that she would review the pictures of my husband's body and get back to me that afternoon and that did not happen either.

. . .

...at a later date...again I asked to see the photos of husband's body. [The constables] left and came back. I was told that their supervisor said I could see the photos and that [a named constable] was doing some training that week and that on Thursday she should be able to meet me again for a couple of hours, so I could review the photos. I did receive a call (at a later date) from [a named Inspector] and was told I would not be seeing the photos...

. .

To this date...I have not been given access to all the pictures that they have on file (even after being given permission). I need and want to have these pictures so that my nightmare that has been ongoing for 13 ½ months can end and I can then grieve for my late husband and then heal after this traumatic event.

. . .

To this date, all the documentation that I have received from the RNC has either been blackened out or incomplete...I am only seeking answers and they are creating more questions, then [sic] answers. Why the secrecy? Why the broken promises? What are they hiding? Why are they continuing to torture me? Why the missing information? Why the missing pictures?...

IV DISCUSSION

[7] The issue to be considered in this matter is whether the RNC has properly applied section 30 of the *ATIPPA* when they withheld information from the Applicant. Of note, section 30 has since been extensively revised by Bill 29, but this request was dealt with under the old legislation.



- [8] Section 30 of the Act that was in effect at the time of this Request stated:
 - 30(1) The head of the public body shall refuse to disclose personal information to an applicant.
- [9] Subsection 2(o) of the ATIPPA defines "personal information" as follows:
 - (o) "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 political beliefs or associations,
 - (iii) the individual's age, sex, sexual orientation, marital status or family status,
 - (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;
- [10] Subsection 30(2) provides that there are a number of circumstances where the s.30(1) prohibition does not apply:
 - (2) Subsection (1) does not apply where
 - (a) the applicant is the individual to whom the information relates;
 - (b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;
 - (c) there are compelling circumstances affecting a person's health or safety and notice
 of disclosure is mailed to the last known address of the third party to whom the
 information relates;
 - (d) an Act or regulation of the province or Canada authorizes the disclosure;



- (e) the disclosure is for a research or statistical purpose and is in accordance with section 41;
- (f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;
- (g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;
- (h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;
- (i) public access to the information is provided under the Financial Administration Act;;
- (j) the information is about expenses incurred by a third party while travelling at the expense of a public body;
- (k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit; or
- (l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including
 - (i) personal information that is supplied in support of the application for the benefit, or
 - (ii) personal information that relates to eligibility for income and employment support under the Income and Employment Support Act or to the determination of assistance levels.
- [11] None of these exceptions to subsection 30(1) applied to the facts in this case. As such, once the information met the definition set out in subsection 2(o) the RNC were required by the *Act* to withhold it.
- [12] The list provided in subsection 2(o) is not an exhaustive list of items that meet the definition of "personal information". The information withheld by the RNC was clearly "recorded information" as it was contained within their police files. It was also "about an identifiable individual" as it pertained directly and exclusively to the deceased. Common information, such as his address which was shared with the Applicant, was released.



- [13] The RNC also referred to subsection 12(2)(c) in their formal submission, expressing concern for the impact of releasing the records on the health and safety of the Applicant. Section 12 states:
 - 12. (1) In a response under section 11, the head of a public body shall inform the applicant
 - (a) whether access to the record or part of the record is granted or refused;
 - (b) if access to the record or part of the record is granted, where, when and how access will be given; and
 - (c) if access to the record or part of the record is refused,
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,
 - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
 - (iii) that the applicant may appeal the refusal to the Trial Division or ask for a review of the refusal by the commissioner, and advise the applicant of the applicable time limits and how to pursue an appeal or review.
 - (2) Notwithstanding paragraph (1)(c), the head of a public body may in a response refuse to confirm or deny the existence of
 - (a) a record containing information described in section 22;
 - (b) a record containing personal information of a third party if disclosure of the existence of the information would disclose information the disclosure of which is prohibited under section 30; or
 - (c) a record that could threaten the health and safety of an individual.
- [14] The Applicant is aware of the existence of the records in this case. Therefore subsection 12(2)(c) has no relevance.

V CONCLUSION

[15] Even though the records responsive to this access request contained information about a tragic loss of life, the RNC was required to withhold the information on the basis of section 30 of the *ATIPPA* and did not err in denying access, even to the deceased's wife.



VI RECOMMENDATIONS

- [16] In view of the conclusions I have reached above, there is no need for me to make any recommendation to the RNC under paragraph 49(1)(a) of the ATIPPA.
- [17] Although I have made no recommendations, under the authority of section 50 of the *ATIPPA* I direct the head of the RNC to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the final decision of the RNC with respect to this Report.
- [18] In addition, in accordance with subsection 49(2) of the ATIPPA, I hereby notify the Applicant of the right to appeal the decision of the RNC to the Supreme Court of Newfoundland and Labrador, Trial Division in accordance with section 60. The Applicant must file any appeal within 30 days after receiving a decision of the RNC referenced above.
- [19] Dated at St. John's, in the Province of Newfoundland and Labrador, this 9th day of July 2013.

E. P. Ring Information and Privacy Commissioner Newfoundland and Labrador