

Report A-2014-011

August 20, 2014

Fire and Emergency Services - NL

Summary:

The Applicant requested information with respect to any improvements, changes, options, demands or solutions to search and rescue operations in the province requested by Minister Kent during meetings in Ottawa during the first week of February, 2014. The Commissioner found that the majority of the information had been properly withheld under section 23(1) (disclosure harmful to intergovernmental relations or negotiations), however given the public nature of the information found in a portion of one withheld sentence, the Commissioner found that section 23(1)(a) was not applicable to that information and it should be released to the Applicant.

Statutes Cited:

Access to Information and Protection of Privacy Act, S.N.L. 2002, c. A-1.1, as amended, s. 23(1)(a).

Authorities Cited:

Newfoundland and Labrador OIPC Report A-2008-012.

I BACKGROUND

[1] Pursuant to the Access to Information and Protection of Privacy Act (the "ATIPPA") the Applicant submitted an access to information request dated February 8, 2014 to the Department of Municipal Affairs ("the Department"). The request sought disclosure of records as follows:

Minister Kent was in Ottawa the first week of February, 2014 with a list of issues regarding search and rescue in NL. Request documentation that relates to these issues including the specific issues in question and the improvements/changes/options/demands/or solutions requested by Minister Kent to address these issues.

- [2] The Department responded on February 14, 2014 to advise that the records requested were in the custody and control of Fire and Emergency Services NL (FES-NL), therefore, the request had been transferred to FES-NL.
- On March 18, 2014, FES-NL responded to the access request indicating that the request had been granted in part, and some information had been redacted in accordance with section 23(1)(a)(i). In a Request for Review received by this Office on April 4, 2014, the Applicant asked for a review of the decision made by FES-NL. Informal resolution efforts resulted in the release of additional information to the Applicant, however, redactions of two other small portions of the records remained at issue, and could not be resolved through further informal resolution efforts.
- [4] By letters dated June 2, 2014 the parties were advised that the Request for Review had been referred for formal investigation as per section 46(2) of the ATIPPA. As part of the formal investigation process and in accordance with section 47 of the ATIPPA, both parties were given the opportunity to provide written submissions to this Office.

II PUBLIC BODY'S SUBMISSION

[5] FES-NL provided a thorough and detailed submission outlining its rationale for the application of section 23(1)(a) to the information in question. Unfortunately, I cannot discuss the submission in detail, as doing so would reveal the information that has been redacted. Generally, FES-NL has outlined in its submission that the redacted information relates to issues or plans which have not



been publicly discussed and premature publication of this information could harm the ability of the Newfoundland government to address these issues or proceed with their plans.

III APPLICANT'S SUBMISSION

In his submission, the Applicant argues that there are no compelling or legitimate arguments that would meet the burden of proving that section 23 is applicable to the information in question. Further, the Applicant argues that given the subject matter of his request, and its relation to public health and safety, the public has a right to be informed of the direction, priority and policy of the government. The Applicant states that search and rescue operations have been a prominent issue for the provincial government and it has been very public with its list of demands. The Applicant therefore questions why FES-NL would withhold information in background notes and meeting notes. The remainder of the Applicant's submission sets out his opinion with respect to the issue of search and rescue operations and does not relate to the applicability of section 23 to the information in question.

IV DISCUSSION

- [7] Section 23(1)(a) of the ATIPPA states:
 - 23. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
 - (a) harm the conduct by the government of the province of relations between that government and the following or their agencies:
 - (i) the government of Canada or a province,
 - (ii) the council of a local government body,
 - (iii) the government of a foreign state,
 - (iv) an international organization of states, or
 - (iv) the Nunatsiavut Government; or
 - (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies.



[8] In Report A-2008-012, I stated as follows:

Section 23 is composed of two quite distinct and different types of provisions, and I will deal with the application of each of them in turn. The first, section 23(1)(a), refers to a reasonable expectation of harm to the conduct of relations between (in the present case) the Department and a local government body. I have previously held that to justify a refusal under this heading, a body must show, first of all, a clear link between the proposed disclosure and some specific kind of identifiable harm. Second, the body must show that the harm in question is not merely possible, but probable. (See NL OIPC Report 2006-006.)

- [9] In the present case, FES-NL has released the majority of the responsive records. All that remains at issue is five sentences spread over two pages. I have read both submissions carefully and have also reviewed the redacted information and I accept FES-NL's submission with respect to the applicability of section 23(1)(a) to the majority of the redacted information in question.
- [10] The issue of search and rescue is one which is affected by federal-provincial relations, as the responsibility for marine search and rescue is a federal responsibility and ground search and rescue is a provincial responsibility. Search and rescue efforts therefore often involve combined efforts of the federal and provincial governments. The information that has been redacted is information that relates to comments, issues or plans that have yet to be spoken of publicly, and public release of this information could harm the ability of the provincial government to move forward with these issues or plans (if it ultimately decides to do so), as these plans may be affected by (or dependent upon) the province's relationship with the federal government.
- [11] However, there is one portion of a sentence that contains publicly available information and it is my opinion that because of the public nature of this information, section 23(1)(a) is not applicable and it should therefore be released.

V CONCLUSION

[12] Given the foregoing, it is my finding that FES-NL has met the standard of proof required under section 23 with respect to the majority of the information in question and it should therefore not be



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disclosed. The submission of FES-NL contained sufficient evidence to establish a reasonable

expectation of probable harm.

[13] However, given the public nature of the information found in a portion of one redacted

sentence, it is my finding that section 23(1)(a) is not applicable to that information and it should be

released to the Applicant.

VI RECOMMENDATIONS

[14] Under the authority of section 49(1) of the ATIPPA, I recommend that FES-NL release to the

Applicant the portion of the record highlighted in yellow (as attached to the Report sent to FES-NL)

that had previously been withheld under section 23(1)(a).

[15] Under the authority of section 50 of the ATIPPA, I direct the head of FES-NL to write to this

Office, the Applicant and the Third Party within 15 days after receiving this Report to indicate the final

decision of the Department with respect to this Report.

[16] Please note that within 30 days of receiving the decision of FES-NL under section 50, the Applicant

may appeal that decision to the Supreme Court of Newfoundland and Labrador Trial Division in

accordance with section 60 of the ATIPPA.

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of

August 2014.

E. P. Ring

Information and Privacy Commissioner

Newfoundland and Labrador