



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**Report P-2017-001**

**January 23, 2017**

**City of Corner Brook**

**Summary:**

The Complainants submitted a privacy complaint against the City of Corner Brook (the “City”) under the *Access to Information and Protection of Privacy Act, 2015* (the “*ATIPPA, 2015*”). The complaint was in relation to the City’s decision to send City staff an e-mail that contained personal information about the Complainants, as well as the City’s decision to post copies of this e-mail within its premises. The Commissioner determined the City breached the Complainants’ privacy by disclosing their information in contravention of section 68(2) of the *ATIPPA, 2015*. This breach was exacerbated by the City’s failure to uphold section 63 (accuracy of personal information). The Commissioner made recommendations to the City relating to its need for greater caution when handling personal information in similar circumstances in the future.

**Statutes Cited:**

*Access to Information and Protection of Privacy Act, 2015*, S.N.L. 2015, c. A-1.2, ss. 63, 68(1), 68(2), 73(2), 74(1), and 76.

**Authorities Relied On:**

OIPC Reports [P-2016-001](#) and [A-2016-023](#) at <http://www.oipc.nl.ca>.

## I BACKGROUND

- [1] On May 6<sup>th</sup>, 2016, the Complainants filed a Privacy Complaint with this Office against the City of Corner Brook (the “City”) pursuant to section 73(1) of the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)*. This complaint was made in relation to an e-mail that was sent to all City staff on February 26<sup>th</sup>, 2016, and then subsequently printed and posted as a notice on bulletin board(s) at the City Depot on the same date. The e-mail sent by the City Manager stated as follows:

*Please be advised that the City is in active litigation with [the Complainants] of [named Company]. As such, any requests from [Complainants] for information should be directed to the City’s Solicitor [named Solicitor].*

*I would ask that staff please refrain from discussions with these individuals and notify [named Solicitor] when they have been contacted by this litigant.*

The e-mail contains the following statement: “Internal use only.”

- [2] The Complainants were contacted by two separate individuals who had viewed the posting at the City Depot, one of whom sent a cellphone picture of the notice to the Complainants. The Complainants viewed both the e-mail and its posting at the City Depot as a breach of their privacy and that of [named Company], of which Complainant 1 is the director and Complainant 2 an employee. Additionally, they argued this breach of personal information was exacerbated by the inaccuracy of the content of the notice, stating they and [named Company] have not, to date, been engaged in any type of “active litigation” with the City. The Complainants stated that the bulletin boards at the City Depot were visible to City staff who work with the Complainants and [named Company], as well as other contractors (some of whom are the Complainants’ and [named Company’s] competitors), customers, suppliers and vendors (some of whom extend credit to the Complainants and [named Company]), as well as anyone else conducting business at the City Depot.
- [3] In response, the Complainant’s solicitor sent an e-mail to the City dated February 26<sup>th</sup>, 2016 advising of his clients’ upset at the situation. The Complainants’ solicitor stated that he was not aware of any litigation between the Complainants and the City, and informed the City that the content of the post had caused gossip to the effect that the Complainants had

“done something wrong and are being sued by the City.” The Complainants’ solicitor also noted that Complainant 1 “has never had any contact that I know with the City staff in these matters.” Complainant 1 further submitted to this Office concerns that the posting and the misinformation and gossip that spread as a result could impact her professional reputation. The City offered no response.

- [4] The Complainants also stated that their privacy was breached in a second incident during informal access to information requests made to the City by the Complainants. They stated the City’s Access to Information and Protection of Privacy (ATIPP) Coordinator had copied additional City staff on an access request from the Complainants, thereby divulging the identity of the persons requesting information (the Complainants).

## II PUBLIC BODY’S SUBMISSION

- [5] The City provided a submission to this Office dated June 10<sup>th</sup>, 2016 which consisted of a chronology of events that it suggested provided background information pertaining to the Complainants’ allegations of a privacy breach, as well as correspondence between and affidavits from City staff regarding interactions with the Complainants. The City stated that:

*In our opinion the action taken by City staff in both situations was appropriate and we are of the opinion that the Complainants’ privacy was not breached in either incident.*

- [6] The City’s submission was lacking in sufficient detail to respond effectively to the privacy complaint. Instead of addressing the disclosure of information involved in the sending and posting of the e-mail and why the City felt it had authority to do so pursuant to the *ATIPPA, 2015*, the City focused on the relationship between the City and the Complainants, offering little to establish how their legislative obligations to the Complainants were not breached.
- [7] At the latter stages of the informal resolution process the City submitted a letter stating that it did not agree that a privacy breach had occurred in relation to the e-mail and its posting, and raised several arguments that it had not previously submitted to this Office. The

City argued for the first time that the e-mail was specifically and only posted in the “Mechanic’s lunchroom at the City’s Public Works Depot,” stating:

*This lunchroom is not accessible to the public but is for employee use only. As such the notice was not posted publicly.*

Additionally, the City argued for the first time that there was no information contained in the e-mail that meets the definition of personal information under section 2(u) of the *ATIPPA, 2015* and as such no breach of privacy has occurred. The City further noted:

*The names of company directors are publicly available through the provincial Companies Registry. Further, the tendering process that this company engaged in to acquire the contract with the City is also a public process wherein both of their names were disclosed.*

### III DISCUSSION

[8] I find that the information in question is personal information under the Act. The information contained in the e-mail and posting meets the definition of “personal information” under section 2(u) of the *ATIPPA, 2015* as it is “recorded information about an identifiable individual.” In this case the recorded information was about the Complainants. Further, whether an individual’s name can be found on the Companies Registry or was publicly disclosed through a tendering process does not mean the individual’s personal information can be disclosed in other contexts. While the Complainants have referred to their personal information and their privacy as well as that of [named Company], the Company is not an identifiable individual. Therefore the discussion relating to the disclosure and privacy of personal information will be limited to the Complainants in this investigation and Report.

[9] The remaining issues to be resolved are:

- (i) whether the e-mail to City staff constituted an improper disclosure of the Complainants’ personal information such that it breached the Complainants’ privacy;

- (ii) whether the posting of the e-mail in the City Depot constituted an improper disclosure of the Complainants' personal information such that it breached the Complainants' privacy; and,
- (iii) if there is a finding that a breach of privacy occurred in either or both of questions 1 and 2, whether there was any inaccuracy with respect to the personal information of the Complainants in the e-mail sent and posted by the City.

**(i) Whether Sending of E-mail Constitutes Breach of Privacy**

[10] Given that an underlying contractual dispute was being handled through legal counsel for the Complainants and the City, clearly the City would want all inquiries specifically touching on the matter in dispute to be routed through its solicitor. The City may have had reason to inform staff of its decision that only the City's solicitor was to address the Complainants regarding inquiries that specifically touched on the matter in dispute. I reject, however, the City's argument that the notice used was a "... necessary action on the part of the City to protect its interests in the face of a litigant who refused to contact the City's legal counsel despite being requested to do so." The vague and extremely broad notice sought to prohibit any communication between City staff and the Complainants who also reside in the City and might have any number of reasons to contact the City. Without limiting the scope of "active litigation" City staff were prohibited from communicating with the Complainants about anything. The lack of any specificity also left the subject of the dispute open to innuendo and speculation that could harm the Complainants personally and professionally.

[11] It was not necessary to disclose the full content of the e-mail to all City staff to meet the City's purpose. While I recognize the City's concerns regarding staff speaking with the Complainants about matters relevant to an ongoing contractual dispute, an e-mail addressed to select City staff asking them not to speak with the Complainants about the subject of the dispute would have been sufficient. While the City failed to articulate a legislative provision under which it felt it had authority to disclose the Complainants' personal information to City staff (such as a subsection of section 68(1)), any disclosure of personal information under the *ATIPPA, 2015* must be consistent with section 68(2) of the *Act*:

*68 (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.*

[12] The City has not explained why the full content of the e-mail was necessary for its disclosure purpose to City staff. If the point of disclosure was to inform staff not to speak with the Complainants about the matter in dispute and direct them instead to the City's Solicitor, this could have been accomplished by simply stating that. Similarly, discretion should have been exercised in identifying specific staff that needed to be advised instead of sending it to all staff. The City's disclosure was not consistent with section 68(2). Therefore I find the extent of disclosure of personal information to be inconsistent with the Act and therefore a breach of the Complainants' privacy. Adding the statement "Internal use only" to the e-mail does not justify the disclosure to staff of more information than was necessary or sending it to all staff.

#### **(ii) Whether Posting of E-mail Notice Constitutes Breach of Privacy**

[13] The posting of this e-mail in the City Depot also went beyond what was necessary for the City to serve its purpose. I refer again to section 68(2), which states that disclosure should be kept to the minimum amount necessary to serve the purpose for which the information is being disclosed. As the information in this situation had been communicated to all City staff via the City's internal e-mail system, it appears unnecessary for the information to be additionally disclosed via a posting in the City Depot. Using internal e-mail to staff would have been an appropriate manner of disclosing this information (where the content itself was kept to the minimum amount necessary, specific enough to serve the purpose and sent only to those who needed to know it). During informal discussions the City suggested that not all City staff have e-mail accounts. However, this still does not demonstrate the necessity of the e-mail being posted in the City Depot. Other options, such as holding a private meeting among City staff without e-mail access or circulating a private internal memo, could have been used. As noted above, notifying all City staff regardless of their roles was excessive in any event.

[14] As I have found that the posting of the e-mail itself was a disclosure of personal information inconsistent with the *ATIPPA, 2015*, the location of the posting in the City Depot does not affect the breach finding, only its potential severity. The initial complaint from the Complainants noted that the e-mail had been posted on a “bulletin board in the City Depot.” The City did not challenge this claim until near the end of the informal resolution process, where it suggested in a letter to this Office that the post was confined to a single room at the City Depot, not accessible to anyone outside City staff. Given this new information, this Office asked the Complainants to advise specifically where within the City Depot they understood the e-mail had been posted. The Complainants advised:

*It was posted on all of the bulletin boards at the City Depot in the same places people would post notices about items for sale, meeting notices, union notices, etc. The City operates out of two buildings; City Hall where management and administration is located; and the City Depot where the Department of Infrastructure and Public Works (IPW) is located. I would estimate that 3/4 of the City's workforce is located in the City Depot. It is open to anybody who conducts business with the City such as Contractors (our competitors) who would be submitting invoices or receiving work orders on a daily basis as part of working from the Hired Equipment List (there are roughly 30-40 businesses on this Hired Equipment List; suppliers (our vendors who extend credit to our company) delivering parts, providing services, etc. Located at the City Depot is the main warehouse for supplies from a pair of gloves to a loader tire. These supplies would be delivered to the Depot by the vendors. It is also open to the public for submitting and discussing water and sewer claims or insurance claims.*

This Office asked the City to confirm its position that the posting had been confined only to the “Mechanic’s lunchroom at the City’s Public Works Depot.” The City Manager, responded, “to the best of our knowledge, this was the only place the e-mail was posted.” This is an inadequate response, particularly given the City only brought this issue into question six months after its initial response to the Complaints. If the City’s position is qualified, how can they be certain that the notice was only posted in one location and not accessible by anyone other than City staff? I accept the Complainant’s position on this point, including that others outside of City staff would have been able to view the posting.

[15] The Complainant’s description of how they became aware of the posting demonstrates the consequences of failing to adhere to section 68(2) of the *ATIPPA, 2015* and how it

potentially exposed the Complainants to additional unjustified dissemination of their personal information:

*First we received a phone call from a friend who is a City employee asking "what you got going on with the City? You should see what's posted up here about you!" Shortly after, we received a text from another employee with a picture of the notice. At this point we were concerned about the permanency and further distribution of it.*

[16] The Complainants have no way of knowing if additional pictures were taken and to whom they may have been sent. It must be noted that the posting of the e-mail where persons other than staff could view it and the taking of the photographs of the notice took place despite the statement: "Internal use only". In my view, the posting of the e-mail despite that directive factor exacerbates the privacy breach.

[17] I find the extent of disclosure of personal information to be inconsistent with the Act and therefore a breach of the Complainants' privacy. Additionally, the choice to physically post the information unnecessarily risked further dissemination of the Complainants' personal information.

### (iii) Was the Information Inaccurate

[18] Section 63 of the *ATIPPA, 2015* states:

*63. Where an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body shall make every reasonable effort to ensure that the information is accurate and complete.*

[19] This provision, along with the overall spirit and intent of the Act, speaks to the duty of a Public Body to ensure that information it collects, uses or discloses is accurate. The question of accuracy in this case surrounds the description of the Complainants in the e-mail and posting as being in "active litigation" with the City as well as the reference to them as "the litigants." The City has argued that this Office does not have the authority to make a determination on this matter. On the contrary, where accuracy of personal information in the context of section 63 is an issue, it is sometimes necessary to make a finding of fact, as it is

in this case, in order to determine whether or not there has been compliance with the *ATIPPA, 2015*.

[20] Generally, active litigation is determined by whether a party has commenced legal action against another through filing a Statement of Claim or Application in a court's registry. At the time of the e-mail and posting, and up to this point in time, the Complainants advise that they have not filed any action in any court against the City nor has the City filed any legal action against them. The City has provided no evidence to refute this claim. Given this, the inclusion of the statement that, "the City is in active litigation with [the Complainants]" and the reference to the Complainants as "litigants" is inaccurate.

[21] The City had a duty under section 63 to make every reasonable effort to ensure that the information was accurate and complete. The response from the posting suggests that the readers were aware of the meaning of the terms used, as the Complainants were asked why the City was suing them.

[22] Further, the Complainants' solicitor contacted the City on the very same day that the e-mail was sent and posted, and confirmed that there was no active litigation between the parties. The City was given an immediate opportunity to rectify the situation. As such, the City did not make every reasonable effort to ensure the information in question was accurate.

### **Additional Complaint**

[23] The Complainants also alleged their informal access request was copied to City staff in contravention of section 12 of the *ATIPPA, 2015*. Section 12 states:

*12.(1) The head of the public body shall ensure that the name and type of the applicant is disclosed only to the individual who receives the request on behalf of the public body, the coordinator, the coordinator's assistant and, where necessary, the commissioner.*

The request in issue was an informal request submitted outside the auspices of the *ATIPPA, 2015*. Further, even if it had been filed as a formal request, there is no evidence that clearly

demonstrates the Complainants' claim that this request to the City was made public or distributed inappropriately to other City staff.

#### IV CONCLUSION

[24] In summary, I conclude that:

- The Complainants' personal information was disclosed in the e-mail and posted in a manner inconsistent with section 68(2) of the *ATIPPA, 2015*; and
- The Complainants' personal information was used by the City without making every reasonable effort to ensure that the information was accurate and complete, contrary to section 63 of the *ATIPPA, 2015*.

#### V RECOMMENDATIONS

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

- (i) in similar circumstances in the future to only distribute such information to staff who need to know, and to use a procedure which will mitigate against inadvertent disclosure of personal information to the public or other staff, accomplishing the purpose of the disclosure with the minimum amount of personal information necessary, in accordance with section 68(2);
- (ii) in similar circumstances in the future, that every reasonable effort be made to ensure that the information is accurate in accordance with section 63 before using it or disclosing it.

[26] As set out in section 78(1)(b) the head of the City 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 Complainants) within 10 business days of receiving this Report.

[27] Dated at St. John's, in the Province of Newfoundland and Labrador, this 23<sup>rd</sup> day of January 2017.

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

