

Office of the
INTEGRITY
COMMISSIONER



Bureau du
COMMISSAIRE
À L'INTÉGRITÉ

REPORT OF FINDINGS

Right to Information and Protection of Privacy Act

Matter No: 2018-4412-AP-2400

September 12th, 2018

I BACKGROUND

1. This Report of the Commissioner's Findings is made pursuant to the *Right to Information and Protection of Privacy Act*¹ ("RTIPPA"). The Report stems from an investigation of a complaint matter conducted pursuant to s. 68 (1) of the RTIPPA.
2. The Applicant filed a complaint with my Office on April 11, 2018 being unsatisfied with a response received from the Anglophone South School District ("the District") to a request for access to all email and written correspondence from [names of individuals], for the period of September 8, 2015 to February 5, 2018, regarding their complaint against the Applicant. The Applicant also requested access to the privacy report issued by my Office in relation to a privacy breach investigation.
3. The District responded to the request on April 5, 2018, providing access to the relevant correspondence with redactions under s. 21 of RTIPPA as it believed disclosure of the information would be deemed an unreasonable invasion of the privacy of third parties. The District also refused access to some records in full as they were found not to be within the scope of the request or could be protected under s. 21. As for access to the privacy report, the District instructed the Applicant to request a copy directly from my Office.

II INVESTIGATION

4. During complaint investigations, legal counsel first tries to resolve the matter informally, in accordance with the law, and to the satisfaction of both parties. As of April 1st, 2018, RTIPPA allows 45 business days for the informal resolution process, which can only be extended with the consent of both parties. If a complaint cannot be informally resolved within the prescribed timeline, it is then remitted to the Commissioner for review and final disposition.
5. In this case, as the Applicant was concerned that the District did not identify all the relevant records, it was asked that a second search be conducted to ensure that all the relevant records had been found. This rather prolonged second search for additional documents, along with further communications with the District, made it impossible to informally resolve the matter within the legislated new timeline of 45 days, thus necessitating the issuance of this report of findings as required under s. 68(3) of RTIPPA.

¹ S.N.B., c. R-10.6

III ANALYSIS AND FINDINGS

Section 21 – Unreasonable invasion of third party's privacy

6. The rules governing access to personal information of third parties are found in s. 21 of the RTIPPA. Under this mandatory exception, the head shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's privacy.
7. To assist in making this determination, s. 21(2) and 21(3) provide examples of the kinds of personal information that are deemed to be an unreasonable invasion of privacy if disclosed and those that are deemed not to be.
8. When determining if s. 21(1) can be applied to refuse access to a record, the public body must first determine if the information in question is personal information, and if it is, would its disclosure be an unreasonable invasion of a third party's privacy. It is not sufficient that the information is personal information, its communication must constitute an invasion of privacy and the invasion must be unreasonable. Reasonableness is determined based on the context of each case.
9. The RTIPPA defines personal information as recorded information about an identifiable individual, including but not limited to the individual's name and personal contact information, and the views or opinions expressed about the individual by another person.

In this case

Correspondence with redactions

10. The District released the requested correspondence with the following redactions under s. 21(1) of the RTIPPA:
 - a. name of individuals who sent and received the email, the date the email was sent, the subject matter of the email, along with the signature at the end of the email;
 - b. names and email addresses of the individuals who are the subject of the request; and
 - c. personal information of third parties contained the content of some emails.
11. This resulted in the Applicant receiving a response that was not meaningful as it was impossible to know the nature of the information that was redacted or to get a clear picture of the timelines

when the records were created. Under s.14 of the RTIPPA, responses to requests for information must be meaningful so to allow applicants to understand what information exists and why access is not being granted.

12. Based on the investigation of this matter, I find that not all redactions made by the District under s.21(1) are in accordance with the RTIPPA, and in this regard, my comments are as follows.
13. As I mention earlier in this report, to determine whether s.21(1) can be applied to withhold information, the public body must first determine whether the information is personal information, and if it is, would its disclosure be an unreasonable invasion of a third party's privacy.
 - *Email dates and subject matters*
14. From reading the definition of personal information and the relevant emails in this case, it is clear that the date of the emails or their subject matter is not considered personal information, and for this reason, cannot be protected under s.21(1) of the RTIPPA.
 - *Names and signatures of employees of the public body*
15. With regards to the names and signatures of employees, I also find that this information is not personal information, and in that regard, here are my comments.
16. The issue in the present case has been addressed by the Supreme Court, in *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), where it decided that sign-in logs containing the name, dates and times individuals went to their work places constitutes information about the position and is not personal information.
17. Since then, the question has been examined numerous times by Canadian jurisdictions.
18. For instance, in Order MO-3415², the Ontario Commissioner found that to qualify as personal information, the information must be about the individual in a personal capacity. Generally, information associated with an individual in a professional, official or business capacity will not be "about" the individual and therefore, will not be considered personal information.

² 2017 CanLII 21105 (ON IPC)

19. He also adds that even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.
20. When determining whether an employee's name and signature should be disclosed, one must then consider whether the information is about the employee acting on behalf of the public body, or whether it is information conveying something personal about the employee. Where there is no personal dimension to the disclosure of the name of an individual described in a work-related capacity, the information will not be considered personal information.
21. In this case, the names of the employees and their signature information, which may include their job title and business contact information, are contained in emails generated during their employment and do not, in my view, reveal anything of a personal nature. Having found that the information is not personal information, s.21 of the RTIPPA, therefore, does not apply and the information must be released to the Applicant.
- *Names and email addresses of the individuals who are the subject of the request*
22. As for the names of the individuals who are the subject of the Applicant's request, I also find that they should be released. Because these individuals were specifically named in the request, the Applicant is aware of their identity and the disclosure would, therefore, not be deemed an unreasonable invasion of their privacy under s.21(1).
23. The District also redacted the personal email addresses of the individuals who are the subject of the Applicant's request under s.21(1). I agree with the District on this point and find that the personal email addresses were properly redacted. Because the information is not known to the Applicant, its disclosure would, in my view, be an unreasonable invasion of their privacy.
- *Personal information of other third parties*
24. Finally, I address the question of the redactions of personal information of other third parties that were made to the body of the emails.
25. As the Applicant's request concerned correspondence between the District and two other individuals (third parties), most of the information contained in the emails was redacted under s. 21(1) as the District found that its disclosure would be an unreasonable invasion of the third

parties' privacy. However; the District did not redact the personal information about the Applicant.

26. I find that the District properly relied on s. 21(1) in this case. In my view, disclosing the information would be an unreasonable invasion the third parties' privacy as the personal information is about the third parties and is in relation to a sensitive situation involving a student.
27. With respect to the personal information about the Applicant, I find that proper access was granted, apart from one email (dated September 25, 2015), which should have been disclosed to the Applicant as it included opinions expressed about her.
28. It is important to note that, in accordance with the RTIPPA, views and opinions expressed about an individual by another person are considered the individual's personal information. The individual would, therefore, be entitled to receive access unless another provision of RTIPPA applies.
29. The finding regarding access to the email of September 25, 2015 was shared with the District during the informal resolution process and the District agreed to release the email in question with the Applicant's personal information unredacted. My understanding is that the District has already provided the email to the Applicant. Therefore, it is unnecessary to address it further in this report.

Correspondence refused in full

30. After reviewing the correspondence that was withheld in full in this matter, I find that it was properly protected pursuant to s.21(1) of the RTIPPA as it contains personal information of third parties or because it is out of the scope of the request because it is not to or from the individuals identified in the request.

Additional records

31. Since the Applicant was concerned that there might be additional records relevant to her request, the District was asked to perform another search for records. The exercise resulted in the identification of additional records (email correspondence). Having reviewed these records, I am satisfied that they can be protected under s.21(1) of the RTIPPA as they contain personal information of third parties. I am also satisfied that all relevant records to this request have now been produced by the public body for our inspection.

Privacy Report

32. When a request for information is received, the public body must first identify all the records in its custody or under its control that are relevant to the request and then examine their content to determine whether access should be granted. The same process applies to records created by my Office that are in the public body's records.
33. For this reason, the District was invited to review the report in question during the informal resolution process and determine, based on the exceptions of RTIPPA, whether access should be granted. The District agreed and shared with us the proposed redactions it wanted to make to the report. After the redactions were approved by the Office, the report was sent to the Applicant.
34. As the Applicant has already received access to the privacy report, there is no need to address it further in this Report of findings.

IV CONCLUSION AND RECOMMENDATION

35. Based on the investigation of this matter and pursuant to s.73(1)(i)(A) of the RTIPPA, I recommend that the District grant access to the following records:
- a. Correspondence originally released to the Applicant with the following redactions to be removed:
- i. header information;
 - ii. email signatures; and
 - iii. names of the individuals who are the subject of the request.
36. As set out in s. 74(2) of RTIPPA, the District must decide if it will accept the recommendation and notify the Applicant of the decision within 20 business days following receipt of this Report. Failure to notify the Applicant of its decision within the prescribed timeline will result in a deemed refusal to follow the recommendation.
37. If the District decides to accept the recommendation, s.74(3) requires that it comply with it within 20 business days after receiving the Report.

38. If the District decides not to accept the recommendation or fails to notify the Applicant of its decision, the Applicant will have right to appeal the matter to the Court of Queen's Bench in accordance with section 75 of RTIPPA.

This Report is issued in Fredericton, New Brunswick on this 12th day of September 2018.



The Hon. Alexandre Deschênes, Q.C.
Integrity Commissioner