Court Upheld Municipality's Refusal To Disclose Investigation Report



A recent decision out of the Court of King's Bench of New Brunswick,[1] upheld the Municipality of Tantramar's decision to withhold a Workplace Assessment Report under section 20(1) of the *Right to Information and Protection of Privacy Act* ("**RTIPPA**").

What is the exception under section 20(1) of RTIPPA?

One of the purposes of the RTIPPA is to provide access to information, but that is not without limitations. Section 20(1) is a mandatory exception that requires a public body to refuse to disclose information that would reveal the substance of records relating to a personnel or harassment investigation, including those records made by an investigator retained to provide advice or recommendations in the context of such investigation.

Without the protection from disclosure provided by this exception, participants may be less inclined to participate honestly in the investigative process. The section 20(1) exception allows investigators to conduct their work thoroughly, while instilling confidence in all participants that their information and disclosures will remain private and confidential. Investigations are sensitive matters that require confidentiality in order to maintain their integrity and be effective in achieving their purpose.

Phinney v Municipality of Tantramar

In this case, a Town Councillor filed an application seeking an order under the RTIPPA for access to a copy of a Workplace Assessment Report prepared following an assessment of alleged personnel issues in the Sackville Fire Department.

Tantramar declined the request. The requested record was a report completed by an investigator retained to provide advice and draw conclusions in relation to a personnel investigation. Tantramar's position was that they were prevented from disclosing this record under s. 20(1) of the RTIPPA.

Councillor Phinney did not agree with Tantramar's refusal to disclose the report and sought review of this decision in the Court of King's Bench. The Court upheld Tantramar's decision, finding that Tantramar was well within its right to deny Councillor Phinney's request. The Court stated that the disclosure of the requested report would undermine the purpose of section 20(1) and have a chilling effect on

personnel and harassment investigations.

How this may affect you

As a public body, under the RTIPPA, you may be required to disclose certain information upon receipt of an access to information request; however, there are many exceptions contained in the Act that may limit disclosure. Before any information is disclosed, you should consult with our privacy experts to ensure you are complying with all relevant legislation.

Footnote

1. *Phinney v Municipality of Tantramar*, 2024 NBKB 62.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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