



**Office of the Citizens' Representative
Province of Newfoundland and Labrador**

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BY HAND

9 November, 2020

The Honourable David B. Orsborn

Committee Chair

Access to Information and Protection of Privacy Act

Statutory Review

Dear Mr. Chair:

RE: Review of the *Access to Information and Protection of Privacy Act, 2015*

Thank you for the invitation to make a submission with respect to your review of the ATIPPA, 2015.

As the Citizens' Representative, appointed by the House of Assembly pursuant to Section 4 of the *Citizens' Representative Act*, I am a statutory Officer of the House of Assembly as anticipated by both my enabling legislation, and Section 2 (r)(v) of the *House of Assembly Accountability, Integrity and Administration Act* ("HOAAIA").

My statutory and policy-based obligations to both the House and the general public give rise to the following business lines:

1. The receipt and investigation of complaints from the members of the public relating to line departments, agencies, boards and commissions, and other defined provincial public bodies found in the Schedule to the *Citizens' Representative Act*.

2. The receipt and investigation of protected disclosures (aka “whistleblower disclosures”) from officers and employees of the House of Assembly pursuant to Part VI of the HOAAIA, made in the public interest.
3. The receipt and investigation of whistleblower disclosures from government employees pursuant to the *Public Interest Disclosure and Whistleblower Protection Act*.
4. The investigation of complaints of harassment by elected officials pursuant to the *Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly*, which took effect on 1 April 2020.

As you are no doubt aware, the Speaker of the House of Assembly, statutory Officers of the House of Assembly and administrative heads are prohibited from disclosing records connected with the investigatory functions of statutory offices, pursuant to Section 41(c) of the *ATIPPA, 2015*.

While I do not speak for other Officers of the House, I thought it would be prudent at this time to underscore just how important the statutory prohibition is to the ability of my Office to operate properly and efficiently, and to my own ability to perform the functions, and achieve the obligations, assigned to me by statute.

Statistically, my office handles between 600 and 800 complaints per year under the public complaints process enabled by the *Citizens’ Representative Act*, and between 6 and 25 disclosers per year in our whistleblower systems. The primary legislative directives that govern my Office involving privacy and confidentiality are found in the *Citizens’ Representative Act*, specifically ss. 11 (oath of office), 12 (oath of staff), 13 (secrecy) and 27 (private investigation).

Because we are a complaint management organization with a wide jurisdiction, we are privy to, and ultimately act as guardians of a large volume of heightened personal information, including health information. We accumulate thousands of pages of proprietary government information per year in the course of our inquiries and investigations. We receive allegations that are sometimes disturbing. We receive testimony and documents from people who come forward only because of the secrecy and confidentiality provisions in our governing legislation. Their evidence is disclosed to us in the public interest and being able to “speak out safely” is extremely important. Their evidence leads to the correction of misconduct, illegal activity, waste, unhealthy working environments and organizational paralysis due to human resource problems or deficient leadership.

Their identities are protected to prevent reprisals like measures that adversely affect working conditions, demotion, job loss, and threats to their personal safety.

The confidential information that we produce, and collect as part of our investigatory functions, are given an additional layer of protection by the exemption in 41(c) of the ATIPPA.

In my view, the spirit and intent of the exemption was, *inter alia*, to preserve the integrity of the investigative processes used by statutory Officers of the House, to shield these offices against filtered evidence, and to provide a measure of comfort for complainants, respondents and witnesses participating in investigations that information will not be dispensed in access requests to my Office.

If for some reason access requests for "investigatory function" documents were enabled or even partially authorized, this would have a chilling effect, and we would have an exceedingly difficult time assuring that both full documentary disclosure and candid witness evidence has been given in investigations. Our investigative powers would thus, be fettered.

The level of trust and mutual respect that currently exists between my Office and the wider public service proves that my enabling legislation is compatible with the *ATIPPA, 2015*, as long as caution, communication and trust remain the watchwords.

I do not believe there are movements in existence to amend or repeal Section 41(c), however it remains incumbent on me to remain vigilant about legislative changes that would seek to defeat, limit, affect or otherwise diminish the broad remedial purpose for which our Ombudsman and public interest disclosure legislation is designed, and it remains incumbent on me to ensure our investigative processes remain efficient and effective.

To conclude, we take our duty to protect the sensitive information we originate and receive seriously, and we consistently guard against unauthorized disclosure.

Therefore, I endorse the mandatory exemption clause in its current form.

Yours Truly,



Bradley J. Moss

Citizens' Representative