



House of Assembly
Newfoundland and Labrador
Office of the Chief Electoral Officer

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Access to Information and Protection of Privacy Statutory Review 2020
3rd Floor, Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8

Attention: The Honourable David B. Orsborn – Committee Chair

The Office of the Chief Electoral Officer is a statutory office that by its very nature is responsible for the collection of personal information. While generally speaking the Chief Electoral Officer does not receive a significant amount of access to information requests, there have been some requests that are concerning given the need ensure the integrity of the election process and the requirement to keep election documentation secure. Additionally, the Office of the Chief Electoral Officer is also responsible for auditing the finances of individual candidates and political parties and its internal audit working papers must remain confidential and not subject to disclosure.

The *Elections Act*, 1991 S.N.L. 1992 c. E-3.1 ("*Elections Act*"), or any provisions thereof, are not contained in Schedule A to the ATIPPA set out in s. 7(2). Therefore, if there is a conflict between the *Elections Act* and the ATIPPA, the ATIPPA prevails.

One concern of the Chief Electoral Officer is when access to information applicants request records that would not in the normal course be widely distributed outside an election period. While s.55 (4) of the *Elections Act* states that the list of electors shall not be used for any purpose other than that for which it was prepared or other electoral use prescribed by law, this does not prevent an access to information applicant from requesting same. While the provision of this list would be heavily redacted given the amount of personal information contained in the list, the provision of this list is administratively cumbersome and unnecessary. The Permanent List of Electors should only be disclosed in accordance with the *Elections Act* and should not be subject to access under the ATIPPA.

The issue of "election documents" and "election papers", and the security of the ballot boxes is also addressed in the *Elections Act*.

"Election documents and election papers" is defined in s. 3 (b) of the Act and "refers to those documents or papers that are directed by this Part to be transmitted to the Chief Electoral Officer by the returning officer after an election." These records often contain personal information of

many individuals and third parties. However, the Act is silent on whether these records are subject to ATIPPA, and by virtue of s.7 of the ATIPPA if a request was made for same the Chief Electoral Officer would have to provide responsive records to the access to information applicant.

The act is silent on the interplay between the *Elections Act* and the ATIPPA with respect to the security of the ballot boxes. While s.184 requires a judicial order for the inspection or production of election documents or papers, for greater certainty the ATIPPA should not apply to these records. Similarly, s. 185 of the *Elections Act* addresses the requirement of the Chief Electoral Officer to retain ballot boxes sealed for a period of one year following an election unless otherwise directed by an Order of a judge. Once again, there is nothing in this section addressing the issue of an access to information applicant seeking access to the election documents or papers contained in ballot boxes.

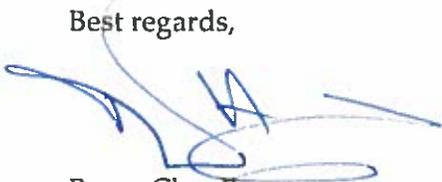
The security of election documents and papers is the exclusive responsibility of the Chief Electoral Officer. These documents and papers should not be subject to ATIPPA and the legislation should be amended to include reference to sections 3(r), 55 (4), 184 and 185 to the *Elections Act* in Schedule A. If an issue arises during an election, the remedy is for a justice to order the provision of election documents and records. A clarification to what is subject to ATIPPA in the *Elections Act* would ensure that the Chief Electoral Officer is not required to apply to court to prevent an applicant for seeking access to these records pursuant to the ATIPPA.

A further issue for the Chief Electoral Officer is the office's audit papers it prepares in reviewing the financial filings of candidates and political parties. The Chief Electoral Officer is of the opinion that the audit papers may fall within the statutory exception to access contained in s.41(c) of the ATIPPA as part of its investigatory file, however clarification of language in that section would be helpful. The Chief Electoral Officer recommends that s.41(c) be amended as follows:

The Speaker of the House of Assembly, the officer responsible for a statutory office, or the head of a public body, shall refuse to disclose to an applicant information in the case of a statutory office as defined in the House of Assembly Accountability, Integrity and Administration Act, records or reports connected with the investigatory or audit functions of the statutory office.

If you would like to discuss these issues further or require additional information please feel free to contact the undersigned at (709) 729-6068.

Best regards,



Bruce Chaulk
Chief Electoral Officer