



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report P-2017-003

August 16, 2017

### Human Resource Secretariat

**Summary:**

After publicly posting salary disclosures pursuant to the *Public Sector Compensation Transparency Act* (the *PSCTA*), the Public Body was advised by a journalist that there appeared to be disclosures in regards to officers of the Royal Newfoundland Constabulary (RNC) that had been exempted from disclosure. Additional review identified the disclosure of a substantial amount of other personal information outside of that authorized for disclosure by the *PSCTA*. The Commissioner conducted an own motion investigation pursuant to section 73(3) of the *Access to Information and Protection of Privacy Act, 2015* (the *ATIPPA, 2015* or the *Act*). The investigation determined that there were breaches of privacy pursuant to the *ATIPPA, 2015*. The breaches, while inadvertent, could have been avoided by the employment of adequate safeguards, resources and review processes.

**Statutes Cited:**

*Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c A-1.2.; *Public Sector Compensation Transparency Act*, SNL 2016, c P-41.02; *Public Sector Compensation Transparency Regulations*, NLR 81/16; *Public Sector Compensation Transparency Act*, SA 2015, c P-40.5.

## I BACKGROUND

- [1] On June 30, 2017 the Human Resource Secretariat (HRS) published its inaugural compensation disclosure list pursuant to the *PSCTA*. Disclosures outside of those authorized under the *PSCTA* led to a privacy complaint to the OIPC. As that complaint related to only one group of affected employees, an own motion investigation was commenced. The original complaint was withdrawn as the complainant was satisfied that our investigation would address concerns specific to RNC officers.
- [2] Lists of salaries paid to government employees and other public servants are generally referred to in Canada as 'Sunshine Lists'. Among provinces, Ontario appears to have published the first such list in 1996 as an important check on the public payroll.<sup>1</sup> Seven other provinces now annually publish similar lists.<sup>2</sup>
- [3] These lists elicit strong reactions from the public, both for and against. Many people question the relevance of including names on the list, and ask why positions or titles are not sufficient on their own. Usage of names has led to coinage of the label "salary pornography" by some in the media.<sup>3</sup> Others argue that names are essential to assess qualifications, value, pay equity, nepotism, political favouritism and other concerns. Some question the salary benchmark of \$100,000 and the failure to account for inflation.
- [4] Ultimately, it is for governments to decide the extent and content of proactive salary disclosure in the form of legislation. In Newfoundland and Labrador the first so called sunshine list did not result from proactive disclosure but rather from access to information requests pursuant to the *ATIPPA, 2015*. The Applicant sought to utilize the Act to acquire and compose a list of salaries of public body employees. In the absence of legislation similar to the *PSCTA*, that information was not otherwise published in that format. That process led to litigation that is currently before the Court of Appeal<sup>4</sup> and as such, will not be discussed in detail in this Report, as one of the issues in that appeal is whether the disclosure of names and salaries is an unreasonable invasion of privacy in the context of the *ATIPPA, 2015*. For

<sup>1</sup> <http://www.cbc.ca/news/canada/toronto/province-s-top-public-earners-from-2013-revealed-1.2590152>

<sup>2</sup> Newfoundland and Labrador, Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta and British Columbia.

<sup>3</sup> [https://www.thestar.com/news/canada/2012/03/25/premier\\_dad\\_should\\_help\\_ontario\\_kick\\_its\\_salary\\_porn\\_habit.html](https://www.thestar.com/news/canada/2012/03/25/premier_dad_should_help_ontario_kick_its_salary_porn_habit.html)

<sup>4</sup> Court File #: 2017 O1H 0010

the purposes of this Report, any salary disclosures not authorized by the PSCTA constituted breaches of section 64(1)(a) of the ATIPPA, 2015.

- [5] The PSCTA came into force on December 14, 2016, a significant move towards transparency that is viewed favourably by this Office. It requires that core government departments, and the public bodies listed in Schedule A to the *Public Sector Compensation Transparency Regulations (the PSCT Regs)*, annually publish (prior to July 1) the total compensation of all employees earning in excess of \$100,000 per year. Total compensation is defined in the PSCTA as:

*2(i) "total compensation" means the total amount of compensation paid in a year to an employee, but does not include leave payout or an amount paid in lieu of notice upon termination of employment.*

- [6] Employees can apply individually or as a group to be exempt from having their total compensation published:

*7. (1) The deputy minister of a department or the chief executive officer of a public body may exempt information from being disclosed regarding an employee where*

*(a) a written application is submitted in the time period prescribed in the regulations, by, or on behalf of, the employee to*

- (i) the deputy minister of the department where the employee is employed, or*
- (ii) the chief executive officer of the public body where the employee is employed; and*

*(b) the deputy minister of the department or the chief executive officer of the public body is of the opinion that disclosure of the information could reasonably be expected to threaten the safety or mental or physical health of the employee.*

*8. (1) The Lieutenant-Governor in Council may exempt information from being disclosed regarding a category of employees where the Lieutenant-Governor in Council is of the opinion that disclosure of the information could reasonably be expected to threaten the safety or mental or physical health of those employees.*

*(2) The Lieutenant-Governor in Council may prescribe in the regulations other grounds to exempt information from being disclosed regarding a category of employees.*

[7] The *ATIPPA, 2015* requires public bodies to take reasonable steps to ensure that personal information is protected from unauthorized disclosure:

*64. (1) The head of a public body shall take steps that are reasonable in the circumstances to ensure that*

- (a) personal information in its custody or control is protected against theft, loss and unauthorized collection, access, use or disclosure;*
- (b) records containing personal information in its custody or control are protected against unauthorized copying or modification; and*
- (c) records containing personal information in its custody or control are retained, transferred and disposed of in a secure manner.*

[8] Authorized disclosures of personal information by public bodies are generally those permitted or required by law or with consent. The *PSCTA* requires disclosure of names, titles, departments and total compensation of employees covered by it and not exempted from it.

[9] At 10:07 am on June 30, 2017 the Human Resource Secretariat (HRS) published the first iteration of a proactive “sunshine list” in Newfoundland and Labrador<sup>5</sup>, in both pdf and Microsoft Excel formats. Later that morning, a journalist, after downloading the information, notified HRS that it appeared that the compensation information of a group of RNC officers was published despite their having received an exemption pursuant to section 8 of the *PSCTA*. The HRS removed this and other unauthorized disclosures from its website at approximately 12:30pm that same day.

[10] On closer review, it was determined that in addition to the personal information of the 167 RNC officers exempted, other unauthorized disclosures occurred, including:

- employee identification numbers and payroll coding of 640 employees, including employees covered by and outside of the *PSCTA*;
- forms of compensation that do not fall within the *PSCTA*’s definition of compensation, such as salary continuance (17 employees affected);
- name, title, department and total compensation of an employee whose total compensation did not meet the threshold for disclosure;
- names, titles, departments and total compensation of 22 employees outside of the *PSCTA*; and,

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<sup>5</sup> [http://www.exec.gov.nl.ca/exec/hrs/compensation\\_disclosure.html](http://www.exec.gov.nl.ca/exec/hrs/compensation_disclosure.html)

- names, titles, departments and total compensation of 3 employees granted individual exemptions pursuant to the *PSCTA*.

[11] At the outset of our investigation we provided HRS with a list of responsive records for production. Its initial response to our request for records was received on July 18, 2017. Its second response, addressing inquiries arising from the original response was received on August 7, 2017.

[12] As the Department of Justice and Public Safety (JPS) was extensively involved in the aftermath of the breach, especially in regards to the RNC officers, responsive JPS records were also requested. As HRS was unable to obtain records from JPS, a demand was sent by this Office to JPS on August 6, 2017. Some records relating to its interactions with the RNC, RNCA and HRS were received from JPS on August 7, 2017. Others have trickled in as JPS staff return from leave. The conclusion of our investigation was delayed as a result.

## II PUBLIC BODY'S POSITION

[13] Commendably, the HRS was very quick to recognize and acknowledge the privacy breach and responded by:

- Promptly removing the unauthorized disclosures from its website;
- Issuing an apology via a news release<sup>6</sup> from Minister Bennett;
- Preparing and delivering privacy breach notifications (section 64(3) of the *ATIPPA, 2015*), the bulk of which were delivered electronically to affected employees on July 1, 2017;
- Submitting a Privacy Breach Reporting Form to this Office on July 4, 2017; and,
- Immediately considering and offering remedial measures, including changing its internal procedures such that employee identification numbers will not, without additional information, be relied upon to grant access to information in employee files.

<sup>6</sup> <http://www.releases.gov.nl.ca/releases/2017/exec/0630n13.aspx>

[14] The HRS conducted an internal investigation and concluded that the unauthorized disclosures resulted from human error on the part of the employee responsible for final sign off on the lists prior to their publication. That employee accepted full responsibility. While perhaps noble, it was an unnecessary acknowledgment. The actual responsibility for the inadvertent disclosures is widely distributed.

[15] Unfortunately, as will be addressed below, little if any effort has been made by HRS to date in regards to either retrieving the unauthorized disclosure material from the media or requesting assurances with respect to the media's security protocols regarding storage of and access to the unauthorized disclosure material. On its face, this is perplexing given that some of the records contained information exempted from disclosure pursuant to section 8 of the *PSCTA* (based on government's acceptance that disclosure of the information could reasonably pose a threat to the safety of RNC officers).

### III DISCUSSION

#### Timeframe

[16] The *PSCTA* appears to have been copied from Alberta's *Public Sector Compensation Transparency Act*, SA 2015, c P-40.5. While there is no need to reinvent the wheel, some provisions are essential; adding others can impede achievement of the legislation's purpose.

[17] Inserting an appeal from the denial of individual exemption applications and prescribing a 60 day notice period into our *PSCTA* added to the risk of mistakes being made. Section 7 of the *PSCT Regs* states:

*7.(1) The deputy minister of a department or chief executive officer of a public body shall provide written notice to all of the employees of the department or public body that the information in sections 3 and 4 of the Act will be disclosed 60 days from the date of the notice.*

*(2) An employee may file an application under subsection 7(1) of the Act within 14 days of his or her receipt of the written notice referred to in subsection (1).*

*(3) The deputy minister or chief executive officer shall provide his or her decision regarding the application within 14 days of receipt of the application.*

*(4) An employee who is dissatisfied with the decision of the deputy minister or chief executive officer may file an appeal under subsection 7(2) of the Act within 14 days of his or her receipt of the decision of the deputy minister or chief executive officer.*

*(5) The President of Treasury Board shall provide his or her decision regarding the appeal within 14 days of receipt of the appeal. [emphasis added]*

[18] In order to comply with the law, notice to employees had to go out by May 1, 2017 at the latest. Assuming all notices and notifications of decisions were sent in a timely manner, employees had until May 15 to file an exemption application with a deputy minister or chief executive officer. A deputy minister or chief executive officer had until May 29 to render a decision. An employee dissatisfied with the decision of a deputy minister or chief executive officer then had until June 12 to file an appeal with the President of Treasury Board, who in turn had until June 26 to decide whether to grant an appeal. This created the potential of only four to five days to finalize the *PSCTA* disclosure documents, which is not a sufficient amount of time, especially when the small number of employees charged with the task also had to assist with processing the appeals to the President of Treasury Board while working without dedicated administrative assistance. Pursuant to the consultation required by section 112 of the *ATIPPA, 2015*, the potential for insufficient time at the end of the process was referenced in our comments to the Department of Finance.

[19] Indeed, there was a flurry of activity at the end June. In particular, the Newfoundland and Labrador English School District submitted approximately 17 appeals to the President of Treasury Board between June 19 and June 21. They should have been filed by June 12, however notifications of the CEO's decision to teachers were not sent in a timely fashion. Of 60 appeals received by the President of Treasury Board, 49 were decided between June 27 and June 29. The same staff responsible for finalizing the lists for disclosure on June 30 also had to coordinate notifying these 49 appellants whether they had been granted an exemption pursuant to their appeal.

[20] Of critical importance is the fact that creating and publishing these lists had never been done before by HRS employees. Between its first meeting on March 1, 2017 and April 30, 2017, the 'PSCTA Committee' had to develop precedents, forms, policies and guidance while coordinating the efforts of agencies, boards and commissions (ABCs) to assemble the lists that could be published no later than June 30, 2017. Representatives of the ABCs had many questions about the process and compilation of the lists. One of their concerns was how to effect notice, especially in regard to employees on leave or absent on other short term bases. Another concern was how to employ the test to assess reasonable likelihood of harm to employees seeking exemptions. Interaction with ABCs continued up to the morning of June 30. The breach in this case stemmed from one of those interactions.

### The Breach

[21] The breach of privacy that occurred on June 30, 2017 resulted solely from inadvertence. Timelines, limited resources and insufficient vetting procedures created multiple opportunities for errors. The three employees charged with the task of compiling the PSCTA disclosures also had other duties and no dedicated administrative support. One of those three employees was responsible for assembling and vetting the final product prior to its posting online. This employee unnecessarily accepted responsibility for breaching the privacy of hundreds of government employees. There is no evidence in the records provided by HRS whether these employees raised concerns about timelines or available resources. At the outset, the employees expected the exemption applications and appeals to be complete by the end of May. As noted above, a significant number of appeals were filed after June 19, 2017 and decided between June 27 and June 29.

[22] HRS compiled the lists for government departments and ABCs whose payroll is prepared by government. These ABCs were sent their lists for vetting and sign off. The remaining ABCs prepared their own lists. All lists were compiled into a Master List in Excel format with separate tabs for each department and ABC. The lists were also published in pdf format. HRS, appropriately, was trying to maximize the opportunity to access the information by publishing it in more than one format.



- [23] The Workplace Health, Safety and Compensation Review Division (WHSCRD) is one of the ABCs whose payroll is prepared by government. On June 27 it was realized that WHSCRD had not been sent its list for verification and sign off. In a departure from the procedure followed for the other ABCs in this grouping, instead of sending the CEO of WHSCRD the actual Excel document, the 2 entries on it were pasted into an email that was sent to the CEO. The CEO replied on the afternoon of June 29 confirming that the information in the email was correct.
- [24] When the Excel document with the listing for the WHSCRD was added to those approved for online publication, no one noticed that this document had 12 other sheets (tabs), including the unredacted original master. All of the personal information that was not authorized for disclosure pursuant to the *PSCTA* was contained in this Excel document. A journalist discovered the unauthorized disclosures in regards to RNC officers and called the Premier's Office to ask if they were aware of this error. The journalist was referred to HRS, who, after questioning the accuracy of the journalist's conclusions, recognized the error once he led them through the online documents. HRS then promptly contacted the Office of the Chief Information Officer (OCIO) to ask that they remove from the government's website the Excel document relating to the WHSCRD.
- [25] In addition to overlooking the lack of formal signoff on the original document by the CEO of the WHSCRD, the records provided by HRS reveal that numerous edits in relation to several of the lists were still being communicated to OCIO, right up to 10:02am on June 30. The listings were posted by OCIO at 10:07 am.
- [26] Considering that appeals to the President of Treasury Board and notifications regarding them were still being processed and that the lists were still being finalized on June 29 and June 30, avoiding an error leading to the breach of privacy would have been an outstanding accomplishment.
- [27] While perhaps not strictly necessary, none of the three employees had any certification in regards to the Excel program. Further, the employee responsible for final vetting was reviewing his own work.

[28] The final version of the PSCTA listings should have been completed sufficiently in advance of June 30 to allow it to be reviewed internally within government so that it could be verified and tested by subject matter experts and others not involved in compiling the lists. Had this occurred, at a minimum, someone might have noted that the WHSCRD Excel document, with supposedly only 2 listings, comprised 232Kb of data, while another Excel document with 1064 listings comprised just 84.7Kb of data.

[29] That the lists were not finalized until the last minute was not the fault of the employees. An inadequate notice period to accomplish exemption applications and appeals and insufficient resources in the context of doing this exercise for the very first time resulted in an inevitable back log at the end of June.

### Remediation

[30] With the exception of the personal information of the exempted RNC officers, the other personal information disclosed without authorization is not overly sensitive, as it does not expose those impacted to significant risks of identity theft or other harmful results. In particular, employee identification numbers have little relevance outside of government's own human resources processes. To its credit, HRS addressed this potential harm, if any, by immediately notifying its staff that these numbers were no longer acceptable on their own to ascertain the authenticity of employee inquiries and that additional information must be requested to verify identity. HRS also referred to the Employee Assistance Program the three employees whose personal information was disclosed despite their receipt of individual exemptions.

[31] As already noted, HRS issued privacy breach notices to the bulk of the affected employees on July 1. It also filed a notice of the breach with the OIPC on July 4, the first business day following the breach. HRS's internal investigation proceeded in a timely manner. Some of that investigation's recommendations are incorporated in this Report.

[32] The full cooperation of HRS in our investigation is also significant in acknowledging that the issue was not whether a privacy breach occurred, but how it occurred, how to mitigate

the risk of harm and what could be done to reduce the likelihood of future breaches. HRS could not however compel JPS to provide documents relating to JPS's involvement, particularly its interactions with the RNC and RNCA in regard to the publication of the personal information of RNC members exempted as a group pursuant to section 8 of the *PSCTA*. In regards to these requested records, HRS advised, JPS "did not forward any records in relation to this question."

[33] RNC members were exempted because government accepted the RNCA's submission that disclosure of officers' personal information could reasonably be expected to threaten their safety or mental or physical health. The RNCA's brief submission referenced the danger this information could expose officers to, given the occupational requirement of dealing with "members of the criminal element" and noted the example of officers working undercover in a specific unit of the RNC. Based on government's acceptance that RNC officers' health or safety could reasonably be threatened by members of the criminal element, this potentially was the most serious and sensitive breach that occurred on June 30. In terms of assessing the risk of harm from a privacy breach, section 64(8) of the *ATIPPA, 2015*, defines significant harm as including "bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the credit record and damage to or loss of property."

[34] Government's acceptance of the potential for exposure of RNC officers to risks of danger from members of the criminal element required that HRS take all reasonable measures to mitigate the risk posed to RNC officers. HRS advised that JPS decided that legal action was not required because the journalist who downloaded the information advised that there was no present intention to publish the personal information of the exempted officers. HRS advised that they had asked the journalist or his employer how many copies existed, where the information was stored or whether encryption or any other form of security was in place to protect the information. The fact that the journalist did not intend to publish the information (assuming he could speak for his employer) is only one component of the potential risk to officer safety. The information could be lost. Members of the criminal element might attempt to steal the information or extort it. The decision not to explore any action or assurance beyond a verbal representation by the journalist that the information

would not be published stands in contrast to the decision to exempt this information from publication under the *PSCTA* in the first place. To be clear, the journalist and his employer are not responsible, pursuant to the *ATIPPA, 2015*, to mitigate the risks the breach posed to RNC officers pursuant to the *ATIPPA, 2015*.

[35] We pointed out during our investigation that the RNC officers' personal information was used (but not reproduced) in a subsequent story by the same journalist and received the following answers from HRS to a series of related questions:

- Q. *What plans (if any) does HRS (or Justice and Public Safety) have to retrieve the material from CBC? Have all options to seek relief from the courts been ruled out?*
- *The HRS DM understood from his discussion/meeting with several JPS legal authorities on June 30th that all legal options had been considered by JPS and determined not plausible. That being said, it had been felt that the call should come from a JPS solicitor as opposed to a communications person or the ATIPP Coordinator as it would have more of an impact on CBC. [emphasis added]*
  - *As the reporter has since used the information in order to report on gender data, our solicitor has been asked to advise on how we might be able to retrieve the information at this point in time.*
  - *Please see additional information in Appendix 6 in relation to this question.*
- Q. *What, if anything does HRS (or Justice and Public Safety) have by way of a written confirmation or agreement with the CBC in respect to its use and/or publication of the unauthorized disclosures? (the RNC material was very recently used in a pay equity story by CBC)?*
- *As far as the HRS is aware, there is no written confirmation or written agreement with the CBC in respect to its use and/or publication of the unauthorized disclosures. Given the recent use of this material for a story, however, our solicitor has been asked to advise on our next steps.*
  - *Please see additional information in Appendix 6 in relation to this question.*
- Q. *What, if any, information does HRS have with respect to how many copies CBC has of the downloaded material, and what precautions/safeguards (if any) it has in place in regards to security of same? Are there copies circulating on unsecured mobile devices or USBs (as examples)?*

- *The HRS does not have any information with respect to how many copies CBC has of the downloaded material. As we have only recently discovered that the call to CBC had not been facilitated by JPS, our solicitor has been asked to advise on our next steps. [emphasis added]*
- *Please see additional information in Appendix 6 in relation to this question.*

Q. *Where are the emails, memos, notes or other material from Justice and Public Safety, especially in regards to communications/meetings with RNC, RNCA and communications regarding the apparent decision on June 30th not to pursue legal action to force CBC to return the unauthorized disclosures?*

- *The HRS DM confirmed that he did not take any notes or have any other records regarding the June 30th meeting with JPS (i.e. other than those already submitted).*
- *JPS did not forward any records in relation to this question.*

[36] Appendix 6 contained additional relevant information:

**Regarding questions # 5, 6 & 7:**

- *As a result of a meeting held with JPS on June 30<sup>th</sup>, the HRS DM had understood that JPS was making a phone call to CBC to ensure that the information would not be used by CBC staff. The DM further understood that someone had spoken specifically to [redacted] (Executive Producer) at the CBC. It had been decided that a solicitor should make that call as opposed to a Communications person or the ATIPP Coordinator.*
- *On Thursday July 29<sup>th</sup>, a group of JPS employees placed a call to the HRS ATIPP Coordinator to advise that they had not placed a call to the CBC. This was the first time that the HRS was even aware that JPS had not followed through on the decision made on June 30<sup>th</sup>. Once the HRS realized that JPS had not called CBC, an email was immediately sent to the HRS solicitor seeking advice on our next steps. [emphasis added]*
- *On Aug 1<sup>st</sup>, JPS reiterated this information in an email to the ATIPP Coordinator. It was also advised that we seek legal advice on whether s.7 of the Management of Information Act could be used to have the information returned. It is uncertain at this time if the June 30<sup>th</sup> meeting with JPS legal representatives had this on the table for consideration or not.*
- *A second email was sent to the HRS solicitor seeking advice on the applicability, in this instance, of s.7 of the Management of Information Act. Unfortunately our solicitor is out of the office until Aug 14<sup>th</sup> and we will not be able to consult until then.*

- Naturally these communications caused a bit of confusion within the HRS and we began the process of trying to determine what had happened since the HRS DM had left the meeting understanding that JPS was calling CBC. On Aug 2<sup>nd</sup>, further explanation was provided by the JPS DM to the HRS DM. While JPS had intended to make a call to CBC, just prior to doing so, they were advised that a call had already been made by the Premier's Office and a verbal agreement had been obtained from CBC that they would not release the personal information that had been breached. As a result, JPS did not contact the CBC. The HRS DM was not advised of this decision by JPS. [emphasis added]
- The HRS proceeded to have a follow-up discussion with the Premier's Office's Director of Communications and Senior Advisor of Social Policy/ATIPP Coordinator to get a clearer understanding of what had occurred. They provided the HRS with the following summary:
  - The Premier's Office learned of a possible privacy breach after a call from CBC's [redacted]. The Premier's Office then reached out to both Human Resources Secretariat and Justice and Public Safety to determine what happened and next steps.
  - The Premier's Office's Director of Communications and Senior Advisor of Social Policy/ATIPP Coordinator confirmed that a second call was made to [redacted] on June 30<sup>th</sup> with the Director of Communications, Senior Advisor of Social Policy/ATIPP Coordinator and the HRS Deputy Minister in the room. During this call [redacted] identified the location of the personal information that was inadvertently posted.
  - On a subsequent media call to arrange an interview with Minister Parsons surrounding the release of information, the Director of Communications and their Senior Advisor of Social Policy/ATIPP Coordinator called [redacted] who confirmed that he had no intention of posting/reporting the personal information that had been released in error. The notes taken by the Senior Advisor of Social Policy/ATIPP Coordinator during this conversation with [redacted] have been attached for your review.
  - JPS had intended to call CBC; however, when notified that [the] Premier's Office had already had the above-noted communication with CBC, they turned their efforts to notifying possibly affected parties.

As well, the notes made during their conversation with [redacted] were submitted to the HRS on Aug 4<sup>th</sup> and have been attached in Appendix 9.

[37] The notes in Appendix 9 taken by a staff member from the Premier's Office indicate that the journalist said the information would not be made public but, he "was hanging onto it- absolutely."

[38] According to the responses provided directly by JPS, legal action was only assessed as not urgently required in the form of an injunction, due to the journalist having advised that he did not intend to publish it. The recommendations by JPS to HRS, on July 29 and August 1, that HRS get legal advice, appear to coincide with the OIPC's request to HRS asking for JPS records relating to the decision not to consider legal or other action to retrieve or secure the personal information of the RNC officers. While there is no question that remediation is HRS's responsibility, HRS was clearly confused by the communications from JPS and unaware that JPS only excluded immediate legal action to prevent publication. JPS also advised that HRS had not requested a legal opinion from JPS. Given that the JPS solicitor responsible for advising HRS participated in the JPS meeting deciding not to take legal action, HRS's reliance on that JPS opinion makes sense. Further, it is unlikely that any government department distinguishes between the solicited and unsolicited legal opinions of JPS.

[39] In the 228 pages of documents provided to this Office by JPS subsequent to our demand, there is only 1 page of handwritten notes. The remainder consists mostly of emails sending various key messages, public statements and other documents for approval. Some email messages between JPS personnel asked that the recipient telephone the sender. Other email messages between JPS personnel simply asked if there were any updates. Those messages did not receive any email responses in reply.

[40] JPS advises that no notes (other than the 1 page) were taken by any JPS executives or solicitors in any of the meetings referenced above. The lack of documentation as to the reasons for taking the various decisions frustrates the ability of this Office to determine what legal action was considered and what JPS advised HRS, either directly or indirectly. This outcome may be avoided in future by the enactment of a duty to document as recommended by the *ATIPPA Review Committee*, which was chaired by the Honourable Clyde Wells<sup>7</sup>.

[41] It is possible that JPS's consideration of the need for legal action was influenced by the reactions of the RNC and RNCA to the breach. Those reactions, as characterized in JPS

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<sup>7</sup> [http://www.oipc.ni.ca/pdfs/ATIPPA\\_Report\\_Vol1.pdf](http://www.oipc.ni.ca/pdfs/ATIPPA_Report_Vol1.pdf)

records, do not reflect any significant concerns. In particular, an email from a senior JPS official to a senior official in the office of the Executive Council at 5:21pm on June 30 advised: “RNCA and RNC notified. info. well received”; and, this excerpt from an email between JPS officials:

*The Minister of Justice and Public Safety as well as the ADM – Public Safety and Enforcement were in contact with the RNCA President, [redacted]. ADM also notified the Deputy Chief of Police, [redacted] by phone. A follow up conversation in person with RNCA President also took place on the morning of July 4, 2017 and at that time the President indicated he would be speaking with his RNCA membership further and that he did not anticipate any complaints coming forward as a result of the situation.*

#### IV CONCLUSION

[42] The breach of the privacy of hundreds of employees associated with publishing the personal information of public sector employees outside of that authorized by the PSCTA was inadvertent, stemming from human error by employees working on a novel project, pressed by an inadequate timeline, working with insufficient resources and without a sufficient vetting procedure.

[43] HRS’s response to the breach and its subsequent actions and cooperation with this investigation exemplify, with one potential exception, an appropriate response by a public body to a privacy breach. The exception is whether it has taken sufficient action to mitigate the risks associated with the disclosure of the personal information of the exempted RNC officers.

#### V RECOMMENDATIONS

[44] Under the authority of section 76(2) of the ATIPPA, 2015, I recommend that HRS:

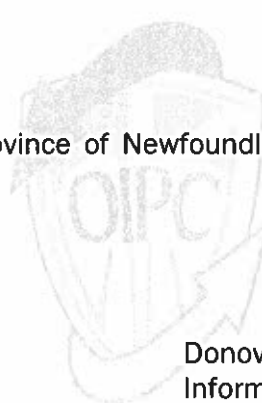
- Contact each of the 167 affected RNC officers to determine whether any of them have concerns for their safety connected to the journalist’s retention of their personal information and if so, take, as soon as possible, all reasonable measures to mitigate that risk;



- Consider whether amendments to the *PSCTA* and the *PSCT Regs* are advisable, particularly in respect of the 60 day notice provision (Alberta has no notice provision and simply advises via its online government publications that exemptions must be filed no later than November 1 each year); and,
- Establish procedures and protocols specific to the *PSCTA* publications, including deadlines for completion of the final draft and final vetting by subject matter experts (human resources and software) not involved with preparation of the documents.

[45] As set out in section 78(1)(b), the Minister Responsible for the Human Resource Secretariat as head of the Public Body, must give written notice of his decision with respect to these recommendations to the Commissioner within 10 business days of receiving this Report.

[46] Dated at St. John's, in the Province of Newfoundland and Labrador, this 16<sup>th</sup> day of August, 2017.



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