

Transcript of the Public Hearings of the Statutory Review Committee
on Access to Information and Protection of Privacy

Date: Wednesday, June 25, 2014

Presenter: Kathryn Welbourn

ATIPPA Review Committee Members:

Clyde K. Wells, Chair

Doug Letto, Member

Jennifer Stoddart, Member

Chairman Wells: It must be Mr. Letto that's amusing you, it can't be me.

Ms. Welbourn: It was. Actually I'm sorry. Can I give you guys something before I start?

Commissioner Letto: Yes.

Chairman Wells: Well, sure you can.

Commissioner Stoddart: Thank you. Thank you very much.

Commissioner Letto: I've read it many times when I've gone through and picked it up. I quite enjoy it.

Ms. Welbourn: Great.

Chairman Wells: Okay, Miss Welbourn we're happy to hear from you.

Ms. Welbourn: Okay. I hope that you'll...can you hear me?

Chairman Wells: Yes.

Ms. Welbourn: I hope you'll ask me some questions. I've not made a presentation like this before. So good afternoon, I've worked as a journalist with newspapers, radio and magazines in Alberta, the Northwest Territories and Newfoundland for the past 27 years. For the last 14 years I have been reporting for and publishing the Northeast Avalon times which is the regional newspaper covering Torbay, Portugal Cove-St. Philips, Logy Bay-Middle Cove-Outer Cove, Pouch Cove, Bauline and Flatrock and recently we've tried to start to including Bell Island in our coverage.

Because of my work I have first-hand knowledge of the effect of the new privacy legislation on a municipal government which I believe is not only eroding public access to information but redefining public information, public discourse and municipal governance in ways I cannot believe were intended by provincial legislators. I want to be clear that I'm not here to criticize municipal councils or their staff but to discuss the impact of the privacy legislation on them.

Some councils like Torbay have excellent information access, extensive minutes of council meetings and committee meetings, correspondence to council development and business applications, government and consultant reports are all automatically available on request to the public once the information has been tabled at a public council meeting. But the value of this information is being eroded by the privacy legislation. Other councils like Portugal Cove-St. Philips seem to be working to try to figure out public access to information issues. Their track record isn't great in their town but again the new privacy legislation is impeding that process and this is a new council trying to figure out how to present the public with the information it should have.

Chairman Wells: Tell me what you mean by the new privacy. Is that subsequent to Bill 29?

Ms. Welbourn: Yes.

Chairman Wells: Okay.

Ms. Welbourn: The first impact of the privacy legislation is simply that every name with the exception of provincial ministers, councilors and town staff is now blacked out on every council document before it is released to the public and in some cases is blacked out by town staff before the information is given to councilors. This includes the names of developers and their companies on development applications and correspondence, the names of properties on any documentation, study or correspondence, the names of groups and organizations, the names of provincial government officials on reports and correspondences, the names of residents on applications to council and

correspondence, the names of family land on maps, the names of groups participating in events, the names of events not run by council and even the names of citizens on public petitions.

In some cases staff redact these names before the information goes to council. Last year one mayor in a particular town that I covered declared in frustration that he could not figure out what council was discussing and trying to decide on and therefore did not know how to vote. When asked about this severing I've been told repeatedly and by several different councils that town staff are following these instructions of the provincial government and that they have been warned that towns could be sued if they did not sever all names from all these documents. And by the province I mean the Department of Municipal Affairs and what they call the privacy people which I guess is the people at the ATIPP Office in Confed building.

Commissioner Letto: Is this severing and redacting happening in all these communities or just...

Ms. Welbourn: No and that's the other thing. It happens here and there are some like Torbay, great information, everything is redacted.

Commissioner Letto: Certain names are there you can see...

Ms. Welbourn: Can't see anything. I received a letter once about a certain development whose name was blacked off from a certain church that's name was blacked off about an event that was blacked out that had happened including a certain group of singers that was blacked out and how disappointed they were that this property was a mess and blah, blah, blah so.

Commissioner Letto: So Torbay provides easy access to the documents...

Ms. Welbourn: Very easy.

Commissioner Letto: ...but all the names and references are blacked out?

Ms. Welbourn: Yes, St. Portugal Cove blacks out all the names as well and some other councils but there is no...I think municipal government is like the wild west. I don't think...I'll get into this more but I don't think Municipal Affairs has done anything at all in regards to letting these people know especially with new councilors who may have been teachers or business men or developers what is public information, what they have to provide, what is the procedure? It starts with the town staff and moves on towards the process of tabling information at public meetings. So I'll get into that more.

Commissioner Letto: I didn't mean to...

Ms. Welbourn: No, no it's okay.

Commissioner Letto: ...get in the way of the flow but I wanted to know how widespread the practice was.

Ms. Welbourn: I've heard from other reporters at other papers that cover other areas that it's the same. It's hit and miss, which is terrible. That means in one town you can know who's decided to build a coffee shop, whether it's Tim Horton's or Joe Blow down the road and in another town you can't know that until they start digging.

Chairman Wells: But you blame it on the Department of Municipal Affairs advising them on this?

Ms. Welbourn: Well and I guess the privacy legislation. I'm not a lawyer so.

Chairman Wells: I understand. Just let me finish the question I was about to ask.

Ms. Welbourn: Sorry.

Chairman Wells: If the Department of Municipal Affairs is responsible for this, how is it that some towns make it available and others do not?

Ms. Welbourn: I think it's because some towns will take the time to...they may have say a town manager who's a trained municipal administrator. They have an idea of what public information is, whereas another town might have hired an engineer. So it could start there or it could start with a tradition of open public documents that have just kind of grown and continued on or a council could have started from a place where they like to release nothing and they are now hiding behind the privacy legislation. But Municipal Affairs is in charge of these towns. That's the body...the provincial body that should be looking after them, training them and that people go to when they have problems getting information.

Chairman Wells: But there is an information access policy manual of the provincial government, isn't it?

Ms. Welbourn: Well I don't know, I don't think it's very detailed for municipal councils and if it is they don't know about it. I've asked them how they come up with their procedures and I was recently told that they just decide what they are going to do. I mean I'm not a municipal councilor. I can only tell you what I've seen and what I've been told. And I'm not a lawyer or a legislator but I...this new meaning what we were talking about, privacy legislation is given to me as the reason for all of this and I believe particularly in Torbay that they truly feel that they are doing the right thing and have been told that they must do that. They have some pretty competent staff over there and their access to information is fantastic. Well should I...sorry.

Chairman Wells: Yeah please continue.

Ms. Welbourn: Okay. So anyway and the thing about being sued this is what always comes up. They could be sued by people if their names are used, as if it's private information. So I just want to say that I always thought that the privacy legislation was for medical records and personnel files not for public documents which it seems to have leaked into, government reports and tabled correspondents and certainly not for public petitions or letters from developers and citizens.

When you ask for a petition that has been tabled at council and you receive a piece of paper with a 100 black magic markers to all of the names you wonder how anyone can trust the names on that petition and how it can be considered a legitimate form of public protest since nobody's name is there anymore. The names were there when the petition was in the store so what is the point? This means that councils are voting on applications to build subdivisions by unnamed companies, sometimes on unnamed land.

Sometimes these applications are contested by unnamed citizens belonging to unnamed groups with numbers of unnamed citizens signing petitions against the unnamed developers of the unnamed

land. Provincial reports about developments for example from provincial let's say transportation or environment might as well be unsigned as the public is often not able to find out who wrote them. Now that can't be considered a private correspondence. This not only leaves council open to accusations of conflict of interest, it impedes the public's basic right to information about what is happening in their towns and treat citizens' concerns and petitions with disrespect, downgrading their efforts to participate and their local democracy to the level of anonymous bloggers. Accountability of government officials, developers and citizens is degraded to anonymous information which citizens have to take on faith is valuable and accurate. If this is allowed to continue the historical public record for these towns in the future will be a farce and the only people recorded to have participated will be municipal councilors and staff.

Chairman Wells: Would you give Ms. Stoddart an opportunity to ask you a question?

Ms. Welbourn: Oh yeah. Okay, yes.

Commissioner Stoddart: It's okay.

Chairman Wells: You're going at a normal, a good speed down the road.

Ms. Welbourn: I'm nervous, so well.

Commissioner Letto: We'll make this an organic process.

Ms. Welbourn: You just keep stopping me.

Commissioner Stoddart: Please, don't worry this is just a fact finding.

Ms. Welbourn: Municipal councils are very tangly so.

Commissioner Stoddart: Okay, well I don't have the experience with them that you do, so if I look at for example your second last paragraph or third last paragraph, the first page of your submission when you talk about councils are voting on applications to build subdivisions but I mean companies on unnamed land and you go on. Do you mean that all this information is always redacted even before the councilors look at this...

Ms. Welbourn: That is also...

Commissioner Stoddart: ...or it's simply redacted when there is an access to information request?

Ms. Welbourn: No, it's always redacted. Some councils will...

Chairman Wells: Even before the councilors deal with?

Ms. Welbourn: ...in some cases, yes. Now, one town was doing that, the town where the mayor didn't know what he was voting on and threw his hands up in frustration. They may have changed that now. But remember I only cover seven councils in a province of hundreds so who knows how other councils are doing this. In other cases, like after a council finishes a meeting everything is considered tabled and public. So I will say go or anyone could go and say, I want this report, that development application. I cannot see and no one can see who is the developer.

Commissioner Stoddart: Okay but if you were in the room...if this is a public meeting you were in the room...

Ms. Welbourn: No, if you're in the room you...

Commissioner Stoddart: ...do they say this is ABC Corporations?

Ms. Welbourn: No, they do not. Not anymore, they used to.

Chairman Wells: Is that true of all the councils you belong to?

Ms. Welbourn: No, it's not. Some of the smaller councils who I think haven't had this privacy training or they are continuing on as they always have and are therefore I think much more democratic. Logy Bay-Middle Cove-Outer Cove is a good example and I would assume that they are...they have a tradition there of being very open and they probably consider their council open and their documents proper so they probably never asked about it and just continue on. As I say near the end, my big fear for councils like that is that they will be coerced into taking the names off of all of these documents.

Chairman Wells: Correct me if I'm wrong, but what's in your paper and what you're saying to us now leads me to the conclusion and I want to make sure I'm drawing the right conclusion...

Ms. Welbourn: Sure.

Chairman Wells: ...that it's your understanding or your appreciation of all the circumstances that you encounter that these limitations are caused when municipalities consult with the Department of Municipal Affairs and they get advice.

Ms. Welbourn: I believe...

Chairman Wells: If you don't consult you don't get that advice and you go on and provide the information.

Ms. Welbourn: I believe that that's true.

Chairman Wells: That's what I'm gathering from what you've submitted.

Ms. Welbourn: Well they always say...I always say, "Who told you that you had to do this?' And they always say, the Department of Municipal Affairs or the privacy people. And I've tried to find who are the privacy people? I believe it's the...I guess there is an Office of Access to Information and I have actually called them once along when this first started happening and council had asked, did a name...I had asked the council, I said, Look I think I should be allowed to see this name, and so they said, well, we'll check, and they were told no. So that's the way that they phrased it, right?

So I went to the same people, I guess it was the ATIPP people and I asked the same question. I phrased it in a different way obviously, doesn't the public have the right to know the name of the developer who is going to be building such and such? And I got the answer that, no, it shouldn't be redacted. So it seems like it's not even clear. I think the problem is unless that's really the legislation, I just can't believe it.

I think the problem is municipal politics unlike in say provincial it is very individual A doing this, has to get permission and one company and Aunt Mary down the road wants to build such and such. So it seems that it would be private acts of private citizens but it's not. These are public things that they are doing within the legislation and the law of their towns so they are meant to be public and they have always been public until now. I mean there's always been councils that won't give anybody any information.

Chairman Wells: When you say until now can you identify the time that started?

Ms. Welbourn: Until the privacy...about the time of their new ATIPP, it started to sort of leak in, the privacy thing started to come up.

Chairman Wells: When you say about the time of the new ATIPP, is that Bill 29 or the original ATIPP in 2005?

Ms. Welbourn: I guess...oh no Bill 29.

Chairman Wells: Okay. I just wanted to make clear what you meant by the new ATIPP.

Ms. Welbourn: Yeah that's what I mean. So I guess...anyway just stop me whenever. I can't...I think it's really...

Chairman Wells: You continue on the way you want to present it.

Ms. Welbourn: Thank you. I do think it's important to note that when people take the time to write letters to their council to sign petitions that it is disrespectful to take their names off these participations that they've made in their own democracy. I really do. I do think it reduces them to the level of anonymous bloggers and

they...that has not been their intention so I don't know who that's protecting but I just think it's...anyway.

Accountability of government officials, developers and citizens have as I've said is degraded to anonymous information which...anyway and as I said, okay.

So this leads to my second and more important point and I believe that the privacy legislation as town staff have been told to follow it is leading in some towns to a degradation of the definition of public information and even to how public governance is carried out. Since all names are now severed from correspondences and reports, this is of course in the councils where they do that. Some councils and staff have taken the next step and now considered the severed documents themselves to be private. In some cases this public documentation never even gets to councilors but is seen only by staff who decide which correspondences councilors need to see.

I have been contacted by citizens who have written to council about issues which affect them. They believe their letters will be tabled at council which means they will have been discussed by council but they simply never come up. I have heard about petitions sent to council which also never make it to any public meeting and therefore are left off the public record entirely and to me this is very...I mean if a person...if people get together and go around and make a petition and present it to council and take all of this time, they have a serious concern. If that petition never makes it past a town staff or a councilor or a committee and on to the public record, why would they do this anymore?

Chairman Wells: Do you attribute that to the new ATIPP Legislation?

Ms. Welbourn: I do because since then...

Chairman Wells: Why? What was the connection?

Ms. Welbourn: Because I will ask, well what if I found out about this I'll ask about, well, what about this? And they'll say, well that's private or we have to take the names off anyway, or something like that. I can't prove it but I really do believe that this has led to a different idea about what is public information and why wouldn't it if it's so private that there can be not even a name of a developer on a development application in a town? So I can't prove it but I do feel that it's true. So it is my opinion, you're right.

I've repeatedly asked for letters discussed at council meetings. These are the ones that actually make it there only to find out and have been sort of arguing back and forth and then I found out that the reason why I'm not getting the letters is that they were never put in the council packages and in fact the councilors themselves never saw them because I guess they are considered private letters between an individual and you don't want to bring their affairs into public now which is the way we are looking at this. The council staff have provided summaries of these documents sent to council and summarized them in the way that they feel is the best to summarize and that's what council gets so that's why I'm not getting them.

Chairman Wells: So council staff tend to be summarizing petitions and letters and not giving examples?

Ms. Welbourn: In some councils the staff summarize the letters or the committee summarizes the letters and that's what included in the officially tabled council information. So people don't hire a councilor to be on one committee, they hire them to oversee the workings of all council and if all councilors don't receive letters about say a pond that's being polluted by a business but only one sees that on his committee and they decide to just précis the letter then the rest of the council isn't getting the full information.

Commissioner Letto: What would that summary kind of look like?

Ms. Welbourn: It would just say a person was complaining about a mess that 205 Thorburn Road, I think that's the last one I saw. Well if I look into it that could just be a mess or it could be a lot more than that, but the point is it really doesn't matter. That resident expected that letter to go to the council of that town and to be tabled as a

public document read into the public record so that something would be done about it and if it wasn't, council could be held accountable.

Chairman Wells: And you feel that the staff of the municipalities that do this, do it because of advice they've received from the Department of Municipal Affairs...

Ms. Welbourn: I do.

Chairman Wells: ...about the application of the...what you call the new ATIPP...

Ms. Welbourn: I do.

Chairman Wells: ...Bill 29.

Ms. Welbourn: Or because of the non advice. These a lot of times, as I said these are not trained administrators. They could be engineers; they could be someone who's just moved up in the town. They may have no training whatsoever in civics...

Chairman Wells: Then why would they withhold like they had no advice down there?

Ms. Welbourn: Because they see it as personal. They see it as a personal letter or a private letter from a private citizen and that's their private business so they don't want to bring that person...they feel that in a way I think they feel they are defending the person by keeping their concern private and not bringing it into the public view or if you want to look at it in the nasty way, they might be deciding, well I don't want this person's view to be heard by the rest of the town because they might get mad if they heard everything that's in the letter. There's all kinds of reasons.

Commissioner Stoddart: Ms. Welbourn, when you say people expect things to be read into the public record...

Ms. Welbourn: Yes.

Commissioner Stoddart: ...can I just ask you on what you base that? Have people said to you...

Ms. Welbourn: Because we felt...

Commissioner Stoddart: ...We signed a petition and we haven't seen it there?

Ms. Welbourn: Yes or it could be because...

Commissioner Stoddart: Or, I wrote in and I expected to see my letter with my name on the public record.

Ms. Welbourn: Or just a phone call, was Did my letter come up at council?

Commissioner Stoddart: Okay.

Ms. Welbourn: I mean that's the way it's always been. Now, some councils as I've said will...they are now saying, although they've never told the public this that you may have to request it if you want your letter in.

Commissioner Stoddart: Okay.

Ms. Welbourn: But people don't know that and it's a developer who's trying to get a change in say a zoning and he's giving you his reasons or that, is he going to request that that letter be tabled in the public? I mean citizens; everybody is equal in these towns. Citizens are doing public...they are talking about public matters, the same as developers, businessmen, politicians. If they are all the same you can't protect a citizen doing...who's lobbying the town to do one thing but not protect a developer and vice versa.

It's turning this information into...and the choice of whether it will become part of an official public record into a political decision made by councilors and staff and that is not their job as far as I'm concerned as it is not the job of provincial legislators to decide what is considered...well I hope not anyway, what is considered private and what is considered public information.

Commissioner Stoddart: In the opposite case where somebody's letter has been considered by the council and some information either about them or generating from them with their name has been published, has anybody complained to you that they are worried about their names being published on the internet?

Ms. Welbourn: On the internet, no.

Commissioner Stoddart: I presume these documents go onto the internet, do they?

Ms. Welbourn: Some of them do, not a lot of them. No, just basic minutes are usually what's on the internet. No I've never heard that. I did have one person...like say as a reporter, if there was a letter tabled and I had any clue who it was I might try to find out but if I was able to. And they didn't...I don't even know if I want to get into this because when you participate in a public act it doesn't matter if you don't want your name. Why does it matter? You are doing something that is public. If you don't want to have your name seen on a petition, don't sign it. There has to be rules about public participation and accountability. Citizens are also accountable for what they say and what they lobby governments to do. They have to be, don't they?

Commissioner Stoddart: Okay, I'm referring to a frequent problem in the age of the internet, which is people who went to some kind of public body, either an administrative tribunal or a council trying to get redress from a problem, the decision or conclusion of that public body was then published on the internet without something...well basically something that means it couldn't be taken down, it couldn't be collected by search engines and so they would find their name turning up or they could find themselves being searched...

Ms. Welbourn: Well, I have never heard that.

Commissioner Stoddart: ...by all kinds of people with whom they had no connection because of the fact that their personal information had not been protected...

Ms. Welbourn: No, I have never...from the council's where these...

Commissioner Stoddart: ...on the web. You've never heard that?

Ms. Welbourn: ...where these...they are still using the names. No, I mean I don't know and that sounds like the purview of somebody else to look after. Actually that sounds like a different problem and an unrelated topic I think because you can't curtail public information and the right to public information because of the internet, can you? You have to set up safeguards I suppose. The safeguard can't be to get rid of public information. How can that be right?

Commissioner Stoddart: Well I guess the definition of what is made public can vary and certainly the issue of people who are trying to seek justice and then find themselves, their name coming up in search engines...

Ms. Welbourn: Right.

Commissioner Stoddart: ...is a current problem that...

Ms. Welbourn: I've never heard that.

Commissioner Stoddart: ...does change the traditional idea of what was public and private because before there were search engines it didn't matter if it was public information because nobody really knew about it anyway.

Ms. Welbourn: Maybe. I just never heard of it.

Commissioner Stoddart: ...beyond those who were there physically or anyway you haven't encountered that?

Ms. Welbourn: No, never.

Commissioner Stoddart: Okay, thank you.

Ms. Welbourn: And maybe it's because it's a municipal council, so I don't know. I mean I have not heard that. I have heard of people who...and I mean this is the strange thing about this. If the names were all there and I went...someone had said something and I wanted to interview them about it, if they wouldn't do the interview with...if they didn't want me to use their name I wouldn't do the interview with them because I don't use anonymous sources. And I'm now being...every source from some of these councils is now an anonymous source. It's terrible.

No one is allowed to write a letter to my paper and have it published without having their name on it so they are accountable for what they say. They have to be accountable too, not just politicians or staff at towns. Everybody has to...when they are participating in the public democracy and all of that they have to be accountable. But now I am in a position where some of my stories...this is what I really don't like as a reporter, have names attached to them and other ones don't. A resident, a development plans to build a 300 lot blah, blah on the side of a wetland and an environmentalist is upset. I have to hope that environmentalist would come out of the woodwork or the developer after the story is published and tell me their name. So I don't know who it is.

I mean this is crazy. It's not for me to sort this out. And I really don't think a lot of people know or understand what is going on in municipal government and it's just such a basic form of government. It's really the nuts and bolts of it all. It starts there and too these councilors are being trained. A lot of them want to go into provincial politics and they are in an arena now where there really are no proper rules that I can see; this privacy legislation all bets are off now. Everything could be private, really.

So and this has led as far as I'm concerned to this information not being considered public suddenly. So what it means is if...what do I want to say? I have asked some councils that don't do a good job, they don't release much information. I have asked them...they've discussed the letter at a council meeting so I will ask for the letter. I will not be given the letter because it's private. So I will say to them, what is your policy on what letters to table, what letters you receive? Because I know that especially during the summer months they get tons of letters about development. There might be zero letters in their correspondence section of their agenda. I know that's not true. How do you decide and what they've come back to me with is that, it is up to council, councilors or staff to decide what to make public.

But this cannot be right. This is disarray now and it is quite different than it used to be, but I believe they feel they have that right because the letters are already anonymous to the public. They aren't accountable anyway, and in a lot of cases they feel like they are not worth the paper they've written on which is a terrible thing to say about some citizen that's written a five page letter to council describing what is going on near their home and demanding action.

So I'm all mixed up so I'm just going to go...I'm going to give you an example of what I'm talking about. It is in here and then I have another concern that's not there. And the example is that I guess it was last year before the municipal election. The Times in an area that we cover, a town council undertook a project to build a half million dollar artificial turf soccer field. No correspondence about this field was tabled at any of the meetings and then it was suddenly discovered...this is the first...I heard it somewhere else but it had to come up at council then. That the field that had been built was too small for its intended purpose, it could not have big competitions there. People were very upset. I found out later that there had been several attempts via email by people from the soccer association and other places to let the town...I don't know if it was just staff or

council because of course we have no way of knowing, but to let them know that it was too small and they should change their plans.

If this correspondence had been read into the record with names to make it legitimate, it makes a difference if I say that the soccer field is too small or the head of some soccer association says it's too small. I believe that that could not have happened and people would have had the soccer pitch that they paid for with their tax dollars instead of one that's too small and cannot hold the competitions for which it was intended. It's just there is no paper trail. That's what this is amounting too.

This next one is something that I don't know who can deal with this but it has...they just say it's the privacy again. A lot of emails coming with a disclaimer on the bottom. This email is only intended for the viewer. I think most emails have that now. This has been some councils and staff have decided that this means that this correspondence is private and it doesn't matter who it's coming from, government report, legal opinion, whoever. It's just private because that disclaimer says so. I mean I get press releases with that disclaimer on it so and it's not up to me. I can't tell people that.

That's up to the people who decide what is public information to decide.

Chairman Wells: Ms. Welbourn...

Ms. Welbourn: Yes.

Chairman Wells: ...I think...I doubt that the people who put that what you call a disclaimer on the end are wanting government information to be held private. Many people, many firms and law firms in particular do that because they realize that information being sent out by email can sometimes be misdirected...

Ms. Welbourn: Yes.

Chairman Wells: ...and end up in a place where it wasn't intended and usually what's that intended for is to tell people saying, well this is private information. If you can look at it you can see it doesn't belong to you, don't be spreading it around. It's coming...that's a...it's not a disclaimer as much as it's asking a favor of a recipient who shouldn't have it. I don't see a lot of wrong with that. I don't think it means that a municipal council receiving that information can't disclose it.

Ms. Welbourn: I agree with you entirely.

Chairman Wells: Yeah.

Ms. Welbourn: Exactly my point.

Chairman Wells: Okay.

Ms. Welbourn: They are considering it to mean that it is private information and doesn't need to come into the public record.

Chairman Wells: If it was received by the group or person for whom it was intended then they treat it in the ordinary course as information provided.

Ms. Welbourn: Right, they would think.

Chairman Wells: Sorry, I hope I haven't distracted you.

Ms. Welbourn: No, it's that I don't know. I think I basically said everything except just that there are some smaller councils who have decent access to information because they haven't been fooled with. They just have a traditional sort of information which sometimes you wish it would be more but reporters are always looking for more but it's just...it's your basic, after everything's tabled if you see something that you think would be interesting you can email them and ask their

town manager, could I please have the report on this or the letter on that or the correspondence on this, and it will automatically.

There is no discussion there is no freaking out, there is no three week wait. It just comes to you because they have a handle on their public information. They know what it is and it's a matter of course. It's not a matter of a decision every time somebody comes and wants information. I hope I haven't been too critical of the town councils. Really I don't want to be like that. I think that the town staff in particular are very hardworking and they have a lot thrown at them. And I think that they are only following the instructions of Municipal Affairs, privacy commission and their own councilors.

Chairman Wells: You've no reason to apologize Miss Welbourn.

Ms. Welbourn: Okay.

Chairman Wells: We are grateful to you for drawing to the committee's attention concerns about the applications of the privacy legislation to municipalities. We've not heard from any municipality, we've not heard from the Federation...what used to be called the Federation of Municipalities so and that's a source of concern to us that we've not been hearing. So your presentation is a welcomed presentation....

Ms. Welbourn: Thank you.

Chairman Wells: ...so you've no reason to apologize for it.

Ms. Welbourn: May I say another thing?

Chairman Wells: Yeah please do.

Ms. Welbourn: I think the reason you may not have heard is because I really do believe that municipal councils haven't been regulated very much and especially in this area, the Northeast Avalon area and Conception Bay South and down. These used to be little small councils. They have very tiny budgets. They've got big budgets now. Millions of dollars, they are growing really, really fast so they are also caught in this, what's happening now. They need to professionalize what they do really fast. And they are not being given I don't feel proper information or support and they should be. I don't know if Municipal Affairs has ever written down the procedures, the proper procedures for public information but they they should and the privacy commission should decide if it really means to interfere with public documents. Really I guess I should read the legislation again but I really thought it was for personnel files and for health records and none of the things that we've talked about are either of those things. They are just regular, basic public information.

Chairman Wells: Day to day municipal information?

Ms. Welbourn: Yes. I shouldn't even have to come in here. I feel stupid and I always feel dumb when I'm phoning the councils: can I

please have...and it's like a huge deal, like they never thought of it before because it wasn't included as an automatic thing in their council package. So that's all I have to say I guess unless you have...

Commissioner Letto: When I saw your presentation I thought I'd do some checking and see what various towns do in their minutes. They do different things in terms of identifying. Town of Gander talks about the homeowner at a certain place explained her desired purchase of a piece of a back land so they named the civic address.

Ms. Welbourn: Right but may I stop you there?

Commissioner Letto: Yeah.

Ms. Welbourn: Isn't that silly? If they mean the civic address it's like a trick, why don't I just drive over and ask them who they are? It's silly.

Commissioner Letto: Happy Valley-Goose Bay land applications development applications names the corporation that wants to do it.

Ms. Welbourn: As they should.

Commissioner Letto: And then the next one names the...it looks like a couple, two people who want to develop a piece of land, they actually name them.

Ms. Welbourn: As they should.

Commissioner Letto: Torbay talks about civic addresses.

Ms. Welbourn: Yes.

Commissioner Letto: Town of Paradise names the people.

Ms. Welbourn: As they should.

Commissioner Letto: Permits given to certain person to construct an accessory building so it does seem that people have different impressions of what it is that they can release.

Ms. Welbourn: They do. And I have found that their impression of it changes after they've been given whatever this training is that I have no access to. So I don't know. That's what I've been told.

Commissioner Letto: In the towns...the town, let's say where a petition comes from the public and the names are all blacked out, so does this actually get circulated to the councilors or ...?

Ms. Welbourn: I don't know. I ask for it I assume so.

Commissioner Letto: Okay.

Ms. Welbourn: I asked for it. Now that town is the one that used to redact before the councilors got to see it. I think they've changed that now but this is what I'm telling you. This could happen anywhere. So now the councilors see it but when I ask for it, the poor staff person has to go through, do this, re-scan it and then send it to me. I received one like that last year and I...

Commissioner Letto: You mentioned that when you speak to people at council offices about this that the threat of a lawsuit seems to be hanging ever-present over their heads. Have they been scared into doing this?

Ms. Welbourn: Yes. Or it's...yes, I believe so. Now councils all used to also tape record all their meetings. Most councils did and that started to stop a few years ago and if you ask them why they said that their advice from Municipal Affairs was to stop recording them, again the reason because they could be sued for something they said. I mean this idea of the citizen lawsuit is quite a myth. I've never heard of anyone suing because council discussed their public business at council. So I don't know where it comes from but it's this whole idea of lawsuits and suing ... and I don't know.

Commissioner Letto: It seems a point that there needs to be some kind of consistent direction from municipalities about all of this.

Ms. Welbourn: If you asked me what I thought that's what I think. I think that they should get together with the people at the privacy...I mean ATIPP there is no point. How can you apply for...I had done the ATIPP process before but it seems silly when I get back has the names all redacted. And for the regular person going in, this is very convoluted and difficult. They could never get to the ATIPP process to file an access to information thing if they don't know...if information is left off the council table, they don't know what to ask

for or which company is doing what, how do you ask for the information then?

I mean there is not enough information in some cases, not in all cases to ask for information. And I mean one of the reasons I'm here is that there is still some access to information in some of these places and some councils have made a fantastic system which is being broken down now by this as far as I can see. So yes Municipal Affairs should figure that out and should help these people who are mostly volunteers, some are paid but still volunteers on their way towards doing this. They do not know how to do it.

Chairman Wells: You haven't used the word explicitly but I would gather from what you've just described is what you're saying the Department of Municipal Affairs should develop an education program for councilors and see that it is delivered to each council...

Ms. Welbourn: I agree.

Chairman Wells: ...to advise them as to how to respond properly to access to information requests.

Ms. Welbourn: And it shouldn't be open to interpretation how the...what should be tabled at council, it should start from when information comes to a council. It should be step by step. I mean you can tell when a council has a really great administrator. You can, there is no argument. The information is either public or it's not. They know what they are doing. They gather it all...everybody knows where to direct their information to and some of these other councils where they are not sure and they have no direction, who knows if stuff is being just shuffled to the side, just because or on purpose. I don't know. Yes, I think Municipal Affairs is mostly responsible and I just think that this privacy stuff has helped it all along. And in some cases hurt councils that are doing well.

Commissioner Stoddart: Can I come back to your example which...of the soccer pitch that was too small.

Ms. Welbourn: Yes.

Commissioner Stoddart: I'm just a bit intrigued by this example and wonder if the role that was played by the correspondence or the other information being tabled at council, is this just an issue triggered by an overextended and perhaps erroneous conception of what is privacy under the Act or what is personal information or is this a governance issue?

Ms. Welbourn: Well that's why I'm saying it's all become one. I believe that in that case that was miscommunication and probably a governance issue but it's so...this privacy thing is because of the individual and close knit nature of these governments, these small governments. It is a governance issue. It is. It's changing governance. If a council feels that email is coming in with a disclaimer on it...emails about anything emails about a soccer field, if the town staff feels that that's private between them and the person that wrote it and it never makes it to council voila: really bad mistake, very costly mistake.

I've had other people show me correspondence that has gone to every member of council. So in some councils that would be listed under correspondence and it would be an issue that was discussed. Some of these correspondences were pretty nasty lobbying things that never...they were discussed among councilors I guess in a private way because they were no longer... do you see what I'm saying? They were no longer considered public information. They weren't very nice emails.

I've written stories based on them and I thought that they were public because they were about town issues, they were lobbying about town issues and about the way democracy was going to be handled in that town. They had gone to the email addresses of every councilor and senior staff. Now in most towns, that would be considered a piece of public correspondence that would have been discussed probably in the secret committee of the whole and then tabled later.

Commissioner Stoddart: I'm just trying to figure out how these councils work...

Ms. Welbourn: Well they...that's it. I don't know.

Commissioner Stoddart: ...and were these emails about something as I would say central to the budget and to the welfare of the town's citizens as building a soccer pitch, a great expense for I guess a small municipality...

Ms. Welbourn: It was shocking.

Commissioner Stoddart: ...that's too small. Would it not also have gone to the senior officials? I mean the councilors aren't actually supervising the building of this pitch, are they?

Ms. Welbourn: No, but they...no but the buck stops.

Commissioner Stoddart: Aren't there senior officials and what is their role in terms of...

Ms. Welbourn: Well the councils...

Commissioner Stoddart: ...seeing the correspondence?

Ms. Welbourn: Well I would assume because they have different committees, the committee would be looking after that, Soccer Pitch Recreation Committee say or whoever, it is so say an email like that. I mean even a phone call, who knows but we're talking about documentation, went to a staff person or a contractor who was building this, then I guess I'm not an administrator but I would assume that that should be brought to the top administrator who would then bring it to council for them to discuss and decide, wait, do we stop? Do we replan? If that never happens and I think that's because there's no clear line of...I mean I don't know if this is your purview but there is no clear line of information. It's just however the council developed it or didn't develop it. I've seen councils

behave quite differently under different administrators too so I
guess...

Commissioner Stoddart: I guess I'm wondering where the line of
decision is also when that's...

Ms. Welbourn: Who knows? The final buck is always supposed to
stop with the council. they vote on everything so they have to take
ultimate responsibility and it's also up to them to decide how their
information is going to flow within there but people are sending stuff
to staff and if it's not clear that it's public information, if they think
it's private then it never needs to come before. I can't prove that's
why this happens but I really believe it is, so...

Chairman Wells: Miss Welbourn, thank you very much for...

Ms. Welbourn: You're welcome.

Chairman Wells: ...your submission. We do appreciate your taking the time and effort to do it.

Ms. Welbourn: Well thank you very much for letting me speak to you.

Chairman Wells: Thank you.

Commissioner Letto: Thanks.

Ms. Welbourn: Okay.

Chairman Wells: Now we have one more schedule for this afternoon. Did you want to take a break?

Commissioner Stoddart: A break, yes.

Chairman Wells: Take 10 minutes this time. It's okay, 10...I'm authorized to take a 10 minute break this time. Thank you very much. We'll be back in 10 minutes.