



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

Report A-2021-024

June 1, 2021

Department of Health and Community Services

Summary:

The Department of Health and Community Services (the “Department”) received an access to information request for information associated with the Applicant’s personal file and that of the Applicant’s child. The Department provided some information but withheld portions of the child’s file, citing section 40 of the *Access to Information and Protection of Privacy Act, 2015* (disclosure harmful to personal privacy). The Commissioner concluded that the Department properly withheld the personal information in accordance with section 40 and this information should continue to be withheld from disclosure.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, section 40.

Authorities Relied On:

NL OIPC Report A-2021-020.

I BACKGROUND

- [1] The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) for her own information, and for her child’s own information, to the Department of Health and Community Services (the “Department”) as follows:

Seeking all medical, change, financial, childcare requests and changes made with or without my knowledge on my file and that of my [child] for the period of 2016 to current. Seeking notes made and details of all access attempts and inquires on both my sons file and my file by name, change, and date. Seeking all childcare information including changes made and requests to change to childcare services. To include name of requestor, date, type of change, and all notes from emails, mailings and calls.

- [2] Section 8 of *ATIPPA, 2015* allows an applicant to request a record containing personal information about them. Further, section 108 (d) allows a parent to exercise that right on behalf of a minor child, with some exceptions where that exercise would be an unreasonable invasion of the minor child’s privacy. The latter is not at issue in these circumstances.
- [3] The Department provided the Complainant with all responsive records to the request, except for several pages of the child’s records, citing section 40 (disclosure harmful to personal privacy).
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

II PUBLIC BODY’S POSITION

- [5] The Department submitted the records in question for our review and asserted that they were properly redacted and withheld under section 40(1).

III COMPLAINANT'S POSITION

- [6] The Complainant submitted that the information in question is her “personal file and the redaction is a violation and misuse of 40(1) under the access of personal information requests.”

IV DECISION

- [7] Section 8 of *ATIPPA, 2015* states:

8. (1) A person who makes a request under section 11 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record may be subject to the payment, under section 25, of the costs of reproduction, shipping and locating a record.

- [8] While both the Complainant and her child have a clear right of access to records containing their personal information, this right does not extend to information excepted from disclosure pursuant to other provisions of *ATIPPA, 2015*. The relevant provision in this matter is section 40(1):

40. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

- [9] This Office has reviewed the records in question. In addition to the records and information which have been provided to the Complainant, there are other records and information which contain the personal information of a third party. We are unable to discuss specifics of our analysis in greater detail, as any such discussion would reveal personal information protected under section 40. However, after reviewing the records and the Department's response, this Office is satisfied that this personal information is required to be withheld by the Department

and section 40 has been appropriately applied. Moreover, this Office is satisfied that the Department has disclosed to the Complainant all information to which she is entitled and that the information which has been withheld under section 40 is not the Complainant's personal information.

V RECOMMENDATIONS

[10] Under the authority of section 47 of *ATIPPA, 2015*, I recommend the Department of Health and Community Services continue to withhold the redacted information in accordance with section 40.

[11] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Health and Community Services must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[12] Dated at St. John's, in the Province of Newfoundland and Labrador, this 1st day of June 2021.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador