



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2021-029

June 28, 2021

Commissioner for Legislative Standards; Department of Children, Seniors and Social Development

Summary:

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015”) to both the Commissioner for Legislative Standards (“CLS”) and the Department of Children, Seniors and Social Development (“CSSD”) for a particular record referencing the Complainant. CLS and CSSD responded by withholding the record, claiming section 41 of *ATIPPA, 2015* (records connected with the investigatory functions of a statutory office). The Complainant disagreed that section 41 was applicable. The Commissioner concluded that section 41 applied to the record and recommended that both public bodies continue to withhold it.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, section 41.

Authorities Relied On: NL OIPC Report [A-2019-010](#).

I BACKGROUND

- [1] The Complainant made two identical access to information requests under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”) to the Commissioner for Legislative Standards (“CLS”) and the Department of Children, Seniors and Social Development (“CSSD”), requesting correspondence between CLS and a member of the House of Assembly (“MHA”), between specified dates, which referenced the Complainant.
- [2] There was one responsive record, which was located by both public bodies. CLS withheld it, claiming section 50 of the *House of Assembly Act*. This provision prohibits the disclosure of information disclosed by an MHA or an MHA’s family to CLS and it prevails over *ATIPPA, 2015*. CSSD withheld the record claiming *ATIPPA, 2015*, section 41 (“records connected with the investigatory functions of a statutory office”). CLS did not initially claim section 41, but during the informal resolution process came to adopt the position that section 41 applied to the record.
- [3] The Complainant disagreed that section 41 applied to the record. As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

II DECISION

- [4] The sole issue is whether the responsive record is covered by section 41 of *ATIPPA, 2015*, the relevant portion of which reads:

41. 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

...

(c) in the case of a statutory office as defined in the House of Assembly Accountability, Integrity and Administration Act, records connected with the investigatory functions of the statutory office.

[5] The responsive record consists of an email thread between CLS and an MHA, with attachments containing financial information provided by the MHA. The main content of the emails concerns the MHA's financial disclosure statement, which every MHA must provide to the CLS under the *House of Assembly Act*.

[6] Our Office has previously examined the scope of the term "investigatory functions" (Report A-2019-010) and concluded that "...it encompass all of the activities that a statutory office is authorized or obliged to carry out under its governing legislation, that can affect the rights or responsibilities of individuals or public bodies." Having reviewed the record, we have concluded that it clearly falls into that category. Section 41 is a record-level, mandatory exception, which means that CLS and CSSD must withhold the entire record. Therefore there is no need to discuss the possible application of section 50 of the *House of Assembly Act*.

III RECOMMENDATIONS

[7] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Commissioner for Legislative Standards and the Department of Children, Seniors and Social Development continue to withhold the record.

[8] As set out in section 49(1)(b) of *ATIPPA, 2015*, the heads of the Commissioner for Legislative Standards and the Department of Children, Seniors and Social Development must each 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.

[9] Dated at St. John's, in the Province of Newfoundland and Labrador, this 28th day of June 2021.


Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador