



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

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NEWFOUNDLAND AND LABRADOR

**A-2022-008**

**June 15, 2022**

## **Newfoundland and Labrador Centre for Health Information**

**Summary:**

The Complainant submitted a request under *the Access to Information and Protection of Privacy Act, 2015* to the Newfoundland and Labrador Centre for Health Information for records relating to a cyber security risk assessment. The Centre provided responsive records, with redactions under section 29(1)(a) (policy advice or recommendations), section 31(1)(l) (disclosure harmful to law enforcement) and 40(1) (disclosure harmful to personal privacy). The Complainant objected to the redactions. During the complaint investigation, the Centre agreed to provide additional information to the Complainant. The Commissioner found that the remaining redactions were properly applied and recommended that the Centre continue to withhold that information.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 29(1)(a) and 31(1)(l).

**Authorities Relied On:**

NL OIPC Reports [A-2021-025](#) and [A-2021-034](#).

## 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”) to the Newfoundland and Labrador Centre for Health Information (“NLCHI”) for:

*Records related to the cybersecurity risk assessment conducted by the NLCHI that is referenced in the 2019-20 annual business report. Link: [https://www.nlchi.nl.ca/images/Final\\_NLCHI\\_Annual\\_Business\\_Report\\_2019-2020.pdf](https://www.nlchi.nl.ca/images/Final_NLCHI_Annual_Business_Report_2019-2020.pdf)*

*Request includes reports, briefing materials, identified plans and priorities and/or needs, audit findings, and lessons learned documents, in any and all formats, including paper and electronic.*

- [2] NLCHI provided responsive records, severing some information pursuant to sections 29(1)(a) (policy advice or recommendations), 31(1)(l) (disclosure harmful to law enforcement), and 40(1) (disclosure harmful to personal privacy).
- [3] The Complainant objected to these redactions. During our investigation, NLCHI agreed to remove some redactions and provided a revised set of records to the Complainant. The section 40 redactions were removed and that information was released. Also, a number of the section 29(1)(a) and 31(1)(l) redactions were removed and that information was released. Some information, however, remained redacted.
- [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] NLCHI’s position with regard to section 31(1)(l) of *ATIPPA, 2015* is that it cannot release anything that could provide insight into its security posture, in particular any specific strategies, technologies, or potential gaps.

[6] NLCHI advised that given the subject matter of the request and the related documents, the information it withheld would be expected to reveal details about the security arrangements of its systems. NLCHI stated that the documents subject to redactions are materially focused on the security of systems in the NLCHI managed environment and involve discussions of various issues related to this topic.

[7] NLCHI further commented:

*Although subsection 31(1)(l) does not require NLCHI to establish any risk of harm from the disclosure of the information, it is important to highlight the particular sensitivity of this information in the context of NLCHI recently experiencing a cyber attack in late 2021. Especially given the prominence of this cyber attack, there is a risk that other malicious actors may develop an interest in exploiting the systems in the NLCHI managed environment. Given some of the details in the documents being withheld, their public disclosure could potentially be misused for inspiration or intelligence gathering purposes in support of a cyber attack.*

[8] NLCHI asserts that the remaining redactions directly fall within the scope of subsection 31(1)(l) and should be withheld at its discretion.

[9] The document entitled “NLCHI Cybersecurity Framework” is being partially withheld based on sections 29(1)(a) and 31(1)(l) of *ATIPPA, 2015*. Regarding the application of subsection 29(1)(a), NLCHI stated that this document is a draft security policy framework for the protection of systems in the NLCHI managed environment. As a result, it contains policy proposals that remain the subject of internal confidential deliberation.

[10] NLCHI asserts that it would be harmful for the NLCHI Cybersecurity Framework draft to be publicly disclosed when it is only meant to advance an internal discussion and does not necessarily reflect the intended practices or ultimate strategy for the organization’s cyber security.

[11] NLCHI believes that it is not clearly demonstrated that the public interest in disclosure outweighs NLCHI’s reasons for applying the exception and the information should be withheld.

### III COMPLAINANT'S POSITION

[12] It is the Complainant's position that the cyber security assessment covered in the access request could fall under categories outlined in section 29(2) of *ATIPPA, 2015*, which lists a number of types of records which cannot be withheld using section 29(1). The assessment could be considered as factual material or as an appraisal. It might also be considered as a final report or final audit on the performance or efficiency of a public body or on any of its programs or policies.

[13] It is the Complainant's position that section 31 of *ATIPPA, 2015* essentially protects information where its disclosure could reasonably be expected to harm law enforcement in some way. The Complainant believes that the public body must prove that the records sought would reveal the arrangements for the security of a computer system, in a way that is expected to harm law enforcement.

[14] The Complainant advised that the responsive records to this access request relate directly to security of personal health information. The Complainant believes that section 9 of *ATIPPA, 2015* should apply to the responsive records as it is in the public interest to know what weaknesses may have been identified that impacted healthcare information technology systems across the province prior to the cyber attack that occurred in October 2021. The Complainant also states that it is in the public interest to know what the government did about any known deficiencies.

### IV DECISION

[15] The remaining issues for this report consist mainly of the application of sections 31(1)(l) and 29(1)(a) to most of the withheld information. In addition, one record continues to be withheld in part under section 29(1)(a) only. The issue to be dealt with in this report is whether the remaining redactions under sections 29(1)(a) and 31(1)(l) of *ATIPPA, 2015* have been appropriately applied.

[16] The relevant sections of the Act are as follows:

*29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal*

*(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;*

...

*31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to*

*(l) reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system;*

[17] This Office has considered the application of section 31(1)(l) of ATIPPA, 2015 in previous reports. Report A-2021-025 reviewed the application of section 31(1)(l) in relation to secure video conferencing information. The Commissioner concluded at paragraph 40:

*The risk to Memorial or to users from disclosure of the redacted information may be small, but we are satisfied that it exists. Moreover, regardless of the risk, its disclosure could be reasonably expected to disclose security arrangements for Memorial's secure video conferencing systems and therefore the criteria for applying section 31(1)(l) are met.*

[18] Report A-2021-034 noted that the application of section 31(1)(l) does not require a risk of harm, but only that the release of the information can reasonably be expected to reveal arrangements for the security of a computer system or other areas listed in that exception.

[19] The remaining redactions applied under section 31(1)(l) relate to information about assessments and recommendations on NLCHI's Security and Privacy programs, advice and recommendations related to cyber security, assessments of the Regional Health Authorities in security and privacy, and the NLCHI Cybersecurity Framework draft. As this information provides details of NLCHI's cyber security arrangements, and given the recent cyber attack in October, 2021 that affected healthcare information in this province, I agree that this information can be withheld under section 31(1)(l).

[20] As noted above, NLCHI has withheld this information under both sections 29(1)(a) and 31(1)(l). NLCHI's claim of section 29 is based on the fact that the document remained in draft

form. While section 29 is often applied to draft versions of documents, particularly where final versions of documents exist, OIPC would be concerned if the exception was applied to documents that public bodies, for all intents and purposes, completed but did not finalize and left permanently in draft form. Such an approach could be open to abuse by public bodies. When queried on this point, in light of the fact that this document has existed in draft form for so long, NLCHI replied that:

*At the time the framework was drafted NLCHI was in the midst of the transition to the shared service model, having assumed that mandate in October 2019. Activities related to establishing the new model, followed shortly thereafter by the operational demands of the pandemic and then the cyber incident itself, has left little room for policy development. Hence the delay.*

Based on this, we can accept that the exception applies, given NLCHI's claim that the policy development process was not completed. In any case, section 31(1)(l) also clearly applies.

[21] Finally, one record was withheld based on section 29(1)(a) solely. This record is an email commenting on a NLCHI position paper advising of a certain course of action. I am satisfied that the information redacted fits within section 29(1)(a).

## V RECOMMENDATIONS

[22] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Newfoundland and Labrador Centre for Health Information continue to withhold the information it redacted from the revised responsive records.

[23] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Newfoundland and Labrador Centre for Health Information 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.

[24] Dated at St. John's, in the Province of Newfoundland and Labrador, this 15<sup>th</sup> day of June 2022.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador