



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2022-012

July 28, 2022

Newfoundland and Labrador Centre for Health Information

Summary:

The Complainant made an access 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 the Meditech system. The Centre provided records to the Complainant, but withheld some information claiming 27(1) (Cabinet confidences), 29(1)(a) (Policy advice or recommendations), 40(1) (Disclosure harmful to personal privacy), 31(1)(l) (Disclosure harmful to law enforcement), and 39(1) (Disclosure harmful to business interests of a third party). During the complaint investigation, the Centre agreed to release some additional information and the Complainant agreed to limit the scope of review to certain information withheld pursuant to section 29(1)(a) and section 31(1)(l). The Commissioner recommended the Centre release some of the remaining information and continue to withhold other 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-2021-033](#), [A-2005-005](#)

NL OIPC Guidance Document: [Section 29](#)

ATIPP Office Manual: [Access to Information Policy and Procedures Manual, Dec 2021](#)

BACKGROUND

- [1] The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015”) to the Newfoundland and Labrador Centre for Health Information (“NLCHI”) for the following information:

Any and all correspondence and documents related to upgrades and updates to, or concerns with, the Meditech system in the health authorities since January 2018.

- [2] NLCHI located 606 pages of responsive records pertaining to the Complainant’s request. NLCHI redacted information under sections 27(1) (Cabinet confidences), 29(1)(a) (Policy advice or recommendations), 40(1) (Disclosure harmful to personal privacy), 31(1)(l) (Disclosure harmful to law enforcement), and 39(1) (Disclosure harmful to business interests of a third party) of *ATIPPA, 2015*. NLCHI also redacted information located on 61 pages, marking it as being “Not Responsive” to the ATIPP request.

- [3] NLCHI confirmed that the responsive records provided to the Complainant mistakenly disclosed some information that NLCHI had intended to be redacted under section 29(1)(a) (Policy advice or recommendations).

- [4] The Complainant filed a complaint stating:

I question the level and amount of redactions in the documents, especially in light of the fact that a section of it was accidentally not redacted and the sections that were supposed to be redacted do not seem to meet the criteria. For example, page 325 and the phrase ‘not suitable for modern hospitals’ which was redacted under 29 (1) (a). That statement is fact and is not “advice to government”.

- [5] During resolution efforts, NLCHI agreed to release some additional information that it had previously redacted under sections 29(1)(a), 31(1)(l), 39(1) together with some additional information it had labeled as being “not responsive”.

- [6] NLCHI confirmed that it would not release any additional information.

[7] Informal resolution was unsuccessful, and the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*. The Complainant agreed to limit the scope of the formal investigation to certain redactions that NLCHI had claimed under section 29(1)(a) and one redaction that NLCHI had claimed under sections 29(1)(a) and 31(1)(l).

[8] The Information and Privacy Commissioner, Michael Harvey, delegated authority for this matter to me, as Director of Research and Quality Assurance, pursuant to section 103 of *ATIPPA, 2015*. The decision to delegate this matter was made because the Commissioner was an Assistant Deputy Minister in the Department of Health and Community Services with responsibilities relating to the records which are the subject of this Report. The Commissioner has therefore recused himself from participating in the investigation of this complaint.

ISSUES

[9] Did NLCHI appropriately apply sections 29(1)(a) and section 31(1)(l) to the reviewed information?

DECISION

[10] NLCHI withheld information pursuant to section 29(1)(a) which states that:

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;

[11] As discussed in Report A-2021-033, at paragraph 9:

This exception is intended to provide public servants with a “safe space” in which to hold discussions or debates around courses of action and to provide advice or recommendations about policy or procedural matters, without being concerned that their views and opinions will be made public. The extensive jurisprudence on this topic, including court decisions, confirms that the

exception covers drafts of documents and the discussions around them. (See John Doe v. Ontario (Finance)).

[12] Under section 29(2)(a), the head of a public body shall not refuse to disclose “factual material” when claiming section 29(1)(a).

[13] Section 29(1) is an information-level exception whereby a public body must conduct a line-by-line review of the information to determine if section 29(1) is applicable. Factual material, if it does not set out or imply options or recommended courses of action, is not subject to section 29(1). In accordance with section 8(2), if it is reasonable to do so a public body must disclose any information in a record to which an exception does not apply.

[14] The ATIPP Office released an *Access to Information Policy and Procedures Manual* that was prepared by the Department of Justice to assist public bodies in their application of *ATIPPA, 2015*. This Manual offers the following assistance to public bodies as it relates to assessing the factual material exclusion of section 29(2):

Background methodology, data, analyses, questions, and factual information of all reports, studies or information in the scope of subsection 29(2) must not be withheld under subsection 29(1).

...

Factual material means information which does not set out or imply options or recommended courses of actions. Such information is factual and cannot be withheld under subsection 29(1) [BC Order 02-38 Footnote]. The context of factual information is not relevant when considering applying this exception. Specifically, the location of factual information (for example, factual information contained in key messages in a briefing note) does not itself reveal advice. [OIPC NL Report 2005-005 Footnote]

[15] Upon review of the information that was withheld by NLCHI pursuant to section 29(1)(a) (Policy advice or recommendations), I am of the view that the reviewed information is factual information that does not reveal or otherwise imply options or recommended courses of actions and therefore it is factual material to which section 29(1)(a) does not apply. I recommend that all information our Office has highlighted on records I am enclosing with NLCHI’s copy of this Report, and found on pages 271, 294, 309, 315, and 316 be released.

[16] NLCHI relied upon section 29(1)(a) and section 31(1)(l) to withhold certain information found on page 524 of the records. While NLCHI did acknowledge that the information was factual, and therefore section 29(1)(a) did not apply, NLCHI maintained the information nevertheless fell under section 31(1)(l).

[17] Section 31(1)(l) states as follows:

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;

[18] Upon review of the information on page 524, I am of the view that this information does not reveal any security arrangements within the meaning of section 31(1)(l). I recommend that the information our Office has highlighted on the records I am enclosing with NLCHI's copy of this Report and found on page 524 be released.

RECOMMENDATIONS

[19] Under the authority of section 47 of *ATIPPA, 2015*, I recommend the release of the information our Office has highlighted on pages 271, 294, 309, 315, 316, and 524 of the records that I am enclosing with NLCHI's copy of this Report.

[20] 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 this recommendation to this Office and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[21] Dated at St. John's, in the Province of Newfoundland and Labrador, this 28th day of July 2022.



Sean Murray
Director of Research and Quality Assurance
Newfoundland and Labrador