



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2022-018

September 13, 2022

Memorial University

Summary:

The Complainant made an access to information request to Memorial University for records consisting of references submitted to the University as part of the Complainant's application package. The University provided records to the Complainant, but withheld some information pursuant to sections 32(b) (confidential evaluations) and 40(1) (disclosure harmful to personal privacy). During the complaint investigation, the University agreed to release some additional information previously withheld pursuant to both exceptions. In reviewing the application of section 32(b), the Commissioner found that some of the information did not contain evaluative or opinion material and therefore did not qualify for that exception to access. The Commissioner recommended partial release of information withheld under section 32(b).

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 32(b) and 40(1).

Authorities Relied On:

NL OIPC Reports [A-2014-014](#).

BACKGROUND

- [1] The Complainant had asked two professors from another institution to provide references in support of an application for admission into a graduate program with Memorial University (“Memorial”). The reference forms were in a specific format provided by Memorial and submitted independently to Memorial by both professors. The Complainant’s application into the program was not successful. Thereafter, the Complainant filed an access to information request pursuant to the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) seeking the reference forms.
- [2] In response to the access request, Memorial released very limited information to the Complainant making redactions pursuant to section 40(1) (disclosure harmful to personal privacy) and section 32(b) (confidential evaluations).
- [3] During the informal resolution process, Memorial agreed to release some additional information previously withheld under both sections. Thereafter, upon the Complainant’s request, Memorial contacted the two professors directly to ask for their consent to release the section 32(b) information to the Complainant. One professor consented and the other did not. Factoring in the professor’s consent, Memorial used its discretion under section 32(b) to release that professor’s reference to the Complainant, revealing the sought after section 32(b) information. The Complainant confirmed they were not seeking release of the remaining information withheld under section 40(1) within both reference forms. Memorial continued to withhold information claimed under section 32(b) within the non-consenting professor’s reference form.
- [4] As informal resolution was unsuccessful with respect to the remaining information withheld under section 32(b), the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

ISSUES

- [5] Did Memorial appropriately apply section 32(b) (confidential evaluations) to the withheld information?

DECISION

- [6] Memorial claimed that all of the remaining redactions properly fall within section 32(b) which states:

32. The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material, provided explicitly or implicitly in confidence, and compiled for the purpose of...

(b) determining suitability, eligibility or qualifications for admission to an academic program of an educational body;

- [7] In assessing whether information is evaluative or opinion material, in Report A-2014-014 our Office accepted the following definitions cited by the Alberta OIPC in Order 98-021:

The Concise Oxford Dictionary defines “evaluative” to mean the adjective for “evaluate” which means “to assess, appraise, to find or state the number of”. “Opinion” is defined as “a belief or assessment based on grounds short of proof; a view held as probable”. I stated in Order 97-002 that an example of an “opinion” would be a belief that a person would be a suitable employee, based on that person’s employment history. An “opinion” is subjective in nature, and may or may not be based on facts.

- [8] The majority of the information withheld by Memorial is clearly evaluative material, consisting of opinions about the Complainant for the sole purpose of determining their suitability, eligibility and qualifications for admission to Memorial’s graduate program. The reference forms were submitted directly by a referee to Memorial on an independent basis. Memorial confirmed that after a referee submits the form, they receive a confirmation email from Memorial stating that their evaluation will remain confidential. As the forms were submitted independently, at the time of submitting the reference forms there was implied confidence and this confidence was expressly confirmed with receipt of the confirmation email.

[9] Given the above, I find that the majority of information withheld by Memorial meets the criteria for confidential evaluations under section 32(b) and should continue to be withheld.

[10] However, section 32(b) is not a record level exception and requires a line-by-line review. While the majority of the remaining information withheld by Memorial meets the criteria for confidential evaluations, there is one area of the form that fails in this regard. This area contains no personal information and there is no evaluative material or opinion material located within it. While I cannot state Memorial's position with respect to this area without disclosing the contents of the record, I can state that Memorial's position is not supported by the contextual evidence, namely the surrounding evaluative material and opinion material that otherwise exists within the reference form.

[11] Given the above, I find that a portion of the reference form does not contain evaluative or opinion material within the meaning of section 32(b) and therefore I am recommending its release. I find that Memorial properly applied section 32(b) to the remainder of information withheld.

RECOMMENDATIONS

[12] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that Memorial University release information withheld pursuant to section 32(b) that is highlighted in the record attached to Memorial University's copy of this Report and continue to withhold the remaining information redacted pursuant to section 32(b).

[13] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Memorial University 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.

[14] Dated at St. John's, in the Province of Newfoundland and Labrador, this 13th day of September 2022.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador