



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2022-026

November 3, 2022

Office of the Child and Youth Advocate

Summary:

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* to the Office of the Child and Youth Advocate for records relating to the Complainant and their minor children. The Office of the Child and Youth Advocate responded by withholding all responsive records under section 41 of the Act. The Complainant made a complaint to this Office arguing jurisdiction, procedural fairness and the public interest. The Commissioner found that the Office of the Child and Youth Advocate's application of section 41 was appropriate and recommended the public body continue to withhold the records.

Statutes Cited:

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

[House of Assembly Accountability, Integrity and Administration Act](#), SNL 2007, c. H-10.1, section 2(r).

[Child and Youth Advocate Act](#), SNL 2001, c. C-12.01.

Authorities Relied On:

NL OIPC Report [A-2018-008](#).

BACKGROUND

- [1] The Complainant submitted an access request under the *Access to Information and Protection of Privacy Act, 2015* ("ATIPPA, 2015" or the "Act") to the Office of the Child and Youth Advocate ("OCYA") for records relating to an OCYA investigation regarding the Complainant and their minor children. In particular they sought:

Notice to Investigate, Notice of Proposed Steps, and Report and any and all documents relating to this investigation regarding my children (names and DOB of children removed) and myself.

- [2] OCYA responded by denying access to all requested records under section 41(c) of *ATIPPA, 2015*. The Complainant did not agree with this response and filed a complaint with this Office.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [4] The Office of the Child and Youth Advocate stated that all records responsive to the request are in relation to its investigatory function and therefore must be withheld under section 41. Additionally, the OCYA submitted that it is an oversight body and that its investigations are generally in relation to the actions taken by other government bodies and agencies, and not in relation to specific individuals or families.

COMPLAINANT'S POSITION

- [5] The Complainant argued that a Notice to Investigate could not form part of an investigation by the OCYA as it would have been issued prior to the start of an investigation. The Complainant also questioned the OCYA's jurisdiction to conduct an investigation. The Complainant also made arguments relating to procedural fairness, the purpose of *ATIPPA, 2015*, and the public interest.

ISSUES

- [6] The sole issue for this report to address is whether the Office of the Child Youth Advocate's application of section 41 was appropriate.

DECISION

- [7] Section 41(c) of the *ATIPPA, 2015* is a mandatory, record-level exception to access regarding records related to the investigatory function of a statutory office. "Statutory office" is defined by section 2(r)(iii) of the *House of Assembly Accountability, Integrity and Administration Act* and includes the OCYA. Section 41(c) does not allow for the exercise of discretion to release such records, nor is there any provision within *ATIPPA, 2015* to override its application.
- [8] Further, the OCYA's investigatory functions are set out in the *Child and Youth Advocate Act*, which empowers the OCYA to review and investigate matters relating to children and youth. The OCYA's investigatory function is primarily related to investigating the actions of government departments and agencies as they relate to children and youth, rather than investigating individual children and families.
- [9] As noted previously in our Report A-2018-008, the purpose of section 41 is to protect the integrity and confidentiality of a statutory office's investigatory functions and it is intentionally broad, requiring a public body to withhold records in their entirety. Specifically, Report A-2018-008 states (at paragraph 40):

The Complainant also argued that none of the documents excepted or redacted under section 41 actually pertain to the investigative functions of the statutory office, as it is his opinion that the responsive records pertain only to the initiation, preparation and internal approval of the applications to disregard his access requests. This argument fails to recognize that the records withheld under section 41 were the applications themselves, records submitted to our Office in support of the applications to disregard, or correspondence to and from our Office about the applications, which were an integral part of our investigation.

[10] Section 41(c) not only applies to records that are created over the course of a formal investigation by a statutory office, but also applies to records *relating* to that investigatory function. As such, records created prior to the launch of an official investigation, or in the course of determining if an investigation is necessary, still *relate to* the Office's investigatory function and therefore are required to be withheld.

[11] There is no evidence that the OCYA was acting outside of its mandate, notwithstanding the Complainant allegations that the OCYA's investigation exceeded its statutory authority. Additionally, the Complainant's assertion that the records should be released on the basis of the purpose of *ATIPPA, 2015* and the public interest ignore the fact that section 41 is a mandatory exception to access, and it has no public interest override provision. Therefore, once it is found to apply the analysis is complete and the records must be withheld.

RECOMMENDATIONS

[12] Under the authority of section 47 of the *Access to Information and Protection of Privacy Act, 2015* I recommend that the Office of the Child and Youth Advocate continue to withhold the records.

[13] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Office of the Child and Youth Advocate 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 3rd day of November 2022.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador