



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2023-028

June 29, 2023

### 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 granting the Complainant's request in part (by providing the Complainant with email communications between itself and the Complainant), and withholding all other responsive records under section 41 of the Act. The Complainant made a complaint to this Office arguing section 41 should not apply as they did not believe the matter to be an investigation. The Commissioner found 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, sections 13 and 15.

#### Authorities Relied On:

NL OIPC Reports [A-2022-026](#), [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:

*All email communications between me and the OCYA, between different staff of the OCYA, and between CSSD and the OCYA as well as call logs if some exist. All information and allegations regarding my children: [named child 1], [named child 2], [named child 3].*

- [2] OCYA responded by providing access to the first part of the request, "all email communications" between the Complainant and OCYA, but denied access to all other 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 submitted that all records responsive to the request are in relation to its investigatory function and duties and were collected as part of those, citing specifically sections 13(1) and 15(1) of the *Child and Youth Advocate Act*, which state the following:

*13. (1) The advocate and every person employed under the advocate shall keep confidential all matters that come to their knowledge in the exercise of their duties or functions under this Act.*

*15. (1) In carrying out the duties of the advocate's office, the advocate may*  
*(a) receive, review and investigate a matter relating to a child or youth or a group of them, whether or not a request or complaint is made to the advocate;*

- (b) *advocate or mediate or use another dispute resolution process on behalf of a child, youth or a group of them, whether or not a request or complaint is made to the advocate;*
- (c) *where advocacy or mediation or another dispute resolution process has not resulted in an outcome the advocate believes is satisfactory, conduct an investigation on behalf of the child or youth or a group of them, whether or not a request or complaint is made to the advocate;*
- (d) *initiate and participate in, or assist children and youth to initiate and participate in, case conferences, administrative reviews, mediations, or other processes in which decisions are made about the provision of services;*
- (e) *meet with and interview children and youth;*
- (f) *inform the public about the needs and rights of children and youth including about the office of the advocate; and*
- (g) *make recommendations to the government, an agency of the government or communities about legislation, policies and practices respecting services to or the rights of children and youth.*

[5] OCYA noted that the specific matter giving rise to this access request involved a preliminary inquiry into the responsiveness of the school environment to identified concerns for the named children. OCYA submitted that its mandate is to ensure that departments and entities, are responding appropriately and effectively. Given this, it noted:

*As any formal investigation may arise out of an initial communication to our office, such communications with other parties regarding children and youth in receipt of government services are records connected with the investigatory function of the OCYA. Therefore the OCYA must deny access to these records. If these OCYA records were subject to disclosure, it would have a profound effect on individuals making complaints to our office, would negatively impact children and youth in the province, and would significantly impact the effectiveness of the core mandate of our office.*

[6] However, despite this assessment in support of its application of section 41(c) of *ATIPPA, 2015*, OCYA also acknowledged it espouses the spirit and intent of the Act to provide the public with the right of access to records wherever possible, where that does not infringe on section 41(c):

*Whereas part of the Applicant's request sought email correspondence between the Applicant herself and the OCYA, we believed it prudent to provide same in*

*the spirit of access as the Applicant/Mother was the initial source of the advocacy request to the OCYA.*

## COMPLAINANT'S POSITION

- [7] The Complainant argued that the matter is not an investigation and therefore section 41(c) should not apply, "This is clearly not an investigation, as they had nothing to investigate: I asked the OCYA if they could ask the school to respect the law."

## ISSUES

- [8] The sole issue for this Report to address is whether the Office of the Child Youth Advocate's application of section 41(c) was appropriate.

## DECISION

- [9] Section 41(c) of *ATIPPA, 2015*, sets out the following:

*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.*

- [10] Section 41(c) of *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.

- [11] Further, the OCYA's investigatory functions are set out in the *Child and Youth Advocate Act*, as noted above, 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.

[12] As noted previously in our Reports A-2022-026 and A-2018-008, the purpose of section 41(c) 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, this Office highlighted at paragraph 40 of Report A-2018-008:

*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.*

[13] 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.

[14] There is no evidence that the OCYA was acting outside of its mandate, and in fact, its efforts to disclose to the Complainant the email correspondence involving the Complainant directly, showed its willingness to adhere to the spirit and intent of *ATIPPA, 2015*, while balancing its obligations under section 41.

## RECOMMENDATIONS

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

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

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 29<sup>th</sup> day of June 2023.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador