



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-030

July 4, 2023

Department of Education

Summary:

The Complainant made a request under the *Access to Information and Protection of Privacy Act, 2015* to the Department of Education for records relating to the Complainant and her minor children. The Department responded by providing some records of correspondence and withholding the majority of the responsive records under sections 29, 31, and 40 of the Act. The Complainant made a complaint to this Office arguing she should have received the additional records. The Commissioner found that the Department of Education's application of sections 29, 31, and 40 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, sections 29(1)(a), 31(1)(l), 40, 108.

BACKGROUND

- [1] The Complainant filed an access request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) to the Department of Education (the “Department”) for the following records:

I wish all information regarding myself and my children [name, name and name], from the Department of Education, for the time frame of September 1, 2018 to present.

- [2] The Department provided access to some of the requested information (emails), but most of the remaining information was refused in accordance with sections 29, 31 and 40.
- [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 Department submitted that processing this request required extensive consultation with the following public bodies:
- Newfoundland and Labrador English School District (the “NLESD”);
 - Conseil scolaire francophone provincial de Terre-Neuve-et-Labrador (the “CSFP”);
 - Department of Children, Seniors and Social Development (the “CSSD”); and
 - Department of Justice and Public Safety (the “JPS”).

Additionally, it identified 4 separate categories of records among those responsive to the Complainant’s request:

- Emails;
 - Official Languages in Education (OLE) Participant Lists;
 - Alternate Transportation Database records; and
 - Master Alternate Transportation spreadsheet;
- [5] With respect to the first category of records responsive to the request, the Department provided all but minimal portions of 3 pages of emails, pursuant to discretionary exceptions

29(1)(a) and 31(1)(l). In its submissions, the Department highlighted that the two redactions made pursuant to section 29(1)(a) constitute advice being provided by or for the Department; the former involving the Director of Education from CSFP to the Deputy Minister of Education, and the latter communication between the Minister and officials in the course of providing advice.

- [6] Additionally, the Department noted that reference to an internal piece of equipment and device location was redacted pursuant to section 31(1)(l). Here it redacted the actual equipment name, location and associated email address due to security concerns if the physical location of its IT infrastructure, as well as the network address for the device (location of Government of Newfoundland and Labrador's shared drives, server name) were disclosed.
- [7] The bulk of the Department's submissions were in relation to its application of section 40(1) to withhold the latter three categories of responsive records in their entirety. These records contain information regarding the Complainant's children, as well as other student names/information and the Department is of the view that it would be an unreasonable invasion of a third party's privacy to allow disclosure. The Department noted that given the nature of the requests, NLESD was consulted and informed the Department the children's records were not in its custody or control but rather were in the custody and control of CSFP. When CSFP were consulted, the Department was advised Child Protection had been involved with the Complainant and the children for some time and a similar request regarding the children's records to CSFP was denied in relation to its concerns regarding the release of the children's records to the Complainant.
- [8] A March decision of the Family Division of Supreme Court ordered the children to be placed in the continuous custody of a Zone Manager with CSSD and the Complainant no longer has any parental rights with respect to her children. The Department submitted that once it became aware of the court decision, it determined the Complainant's request must be assessed via *ATIPPA, 2015* under that lens. The Department noted that generally when a parent makes a request involving records relating to their children, section 108(d) would be considered applicable, which gives parents or guardians limited rights regarding their children's personal information. However, this discretionary authority was determined not to

be applicable in this case as the Complainant's parental rights were legally extinguished by the Court's order. The Department noted this consideration is in keeping with the principle of the best interests of the children.

[9] The Department therefore processed this request as it would any other personal information request – meaning records relating to anyone other than the Complainant were withheld under section 40(1) as disclosure would be an unreasonable invasion of privacy. This included any records involving the personal information of the Complainant's children. The Department noted it found nothing in section 40(2) to override the application of section 40(1), and additionally highlighted sections 40(4)(a) and (f) to note the records in question are presumed to be an unreasonable invasion of the children's privacy as they relate to the types of medical and evaluative records noted in these subsections. The Department also noted that it reviewed section 40(5) and found no circumstances weighing in favor of disclosure to be applicable, but did find subsections (e) and (f) applicable to further weigh in favor of withholding the information.

[10] In addition to the above analysis, the Department responded to the specific points raised by the Complainant, noting:

- applications for alternate transportation are included in the responsive records but have been determined as protected from disclosure under section 40(1); and
- there are no responsive records at the Department with respect to the laptops. These records would be in the custody and control of one of the school districts involved.

COMPLAINANT'S POSITION

[11] The Complainant filed a complaint stating she should have received the information redacted or withheld by the Department in its final response to her. She specifically noted this should include applications for transportation, and applications for laptops.

ISSUES

- [12] The issues for this report to address are whether the Department's application of sections 29(1)(a), 31(1)(l) and 40(1) to redact or withhold responsive records was appropriate.

DECISION

- [13] The relevant portions of the legislation are as follows:

Section 29:

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;*

Section 31:

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

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

Section 40:

40.(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

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- (4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where*

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;*

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- (f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;*

- (5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether*

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(e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence;

Section 108:

108. A right or power of an individual given in this Act may be exercised

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(d) by the parent or guardian of a minor where, in the opinion of the head of the public body concerned, the exercise of the right or power by the parent or guardian would not constitute an unreasonable invasion of the minor's privacy; or

[14] Sections 29(1)(a) and 31(1)(l) are discretionary exceptions under *ATIPPA, 2015*. Where a public body can demonstrate the records in question fall within the description of the section, the public body is permitted to redact or withhold records pursuant to that section. The Department conducted a line by line review of the email records, and its redactions were limited to the information that falls within each of the above noted sections.

[15] Section 29(1)(a) was applied to redact portions of emails, the content of which this Office has determined falls within the description of advice or recommendations developed by or for a public body or Minister. As such, the Department is entitled to redact this information at its discretion.

[16] Section 31 was applied to redact references to an internal piece of equipment/device and its location. Here the Department redacted the actual equipment name, location and associated email address due to security concerns over disclosing the location of its IT infrastructure and network address. On its face, redacting the name and location appears more obviously in line with the section's description, but the email address would not typically seem to fall within the scope of section 31. However, in this case the email address itself identifies the device as part of its name forms the address. As with its application of section 29(1)(a), section 31(1)(l) is a discretionary section and the redactions in question are in keeping with the description of the section so the Department is entitled to redact at its discretion.

[17] Given the information provided by the Department, this Office agrees with its assessment that section 108(d) is not applicable and instead the matter was correctly reviewed under the

lens of a typical personal information access request. The Department's application of section 40 to withhold the remaining responsive records related to the children is in keeping with its obligations under the legislation. To disclose this information would be an unreasonable invasion of privacy and this Office is in agreement with the Department that the additional considerations under sections 40(4) and 40(5) are appropriate and weigh further in favor of withholding these records. The nature of the records is such that disclosure would be presumed to be an unreasonable invasion of the children's privacy, could risk exposure to harm, and must be considered in the context that it was supplied in confidence.

RECOMMENDATIONS

[18] Under the authority of section 47 of the *Access to Information and Protection of Privacy Act, 2015*, I recommend that the Department of Education continue to withhold the records under section 40 and may continue to redact the records under sections 29 and 31 at its discretion.

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

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 4th day of July 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador