



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-032

July 6, 2023

Newfoundland and Labrador English School District

Summary:

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* to the Newfoundland and Labrador English School District (NLESD) for records relating to the Complainant and her minor children. The NLESD responded by denying the Complainant's request initially under section 40 of the Act (disclosure harmful to personal privacy). The Complainant made a complaint to this Office arguing she should be entitled to the records. In its submissions, NLESD's analysis more accurately identified it had either no responsive records to a portion of the request, could neither confirm nor deny it had responsive records to a second portion of the request pursuant to section 17(2), and was able to identify and provide four pages of records responsive to the final portion of the request. The Commissioner found NLESD did conduct a reasonable search and had fully met its duty to assist per section 13.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 17, 40, and 108.

Authorities Relied On:

NL OIPC Reports [A-2023-013](#), [A-2022-032](#), [A-2022-030](#).

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 Newfoundland and Labrador English School District ("NLESD") for records relating to the Complainant and her minor children. In particular she sought:

Complete files regarding my children (as a parent I have access to this information per article 108 of the Information and Privacy Act): [children named]. Including all communications regarding me and my children with the [named French school] and CYS.

[2] NLESD responded to deny access to the records, citing section 40(1) of *ATIPPA, 2015* (disclosure harmful to personal privacy). The Complainant did not agree with this response and filed a complaint with this Office.

[3] In the course of attempts toward informal resolution, it became clear that NLESD had not accurately reflected its legislative analysis and findings in its final response to the Complainant. Additionally, through a further search for records, it found four pages responsive to a portion of the Complainant's request. This Office recommended it provide copies of these four pages, along with a revised final response letter to the Complainant to better reflect the legislative analysis it relied upon in coming to its determination. NLESD complied, providing the Complainant with both.

[4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

[5] In its submission to this Office, NLESD acknowledged the Complainant's children had not been students of the district for approximately four years, when they transferred to a school under the Conseil scolaire francophone de Terre-Neuve et Labrador ("CSF"). As such, NLESD advised it had transferred the records it had in relation to the children to their new school and that it, therefore, had no responsive records to this portion of the request.

[6] With respect to the communications portions of the request, NLESD broke this into two categories:

- communications regarding the Complainant and her children with Child Protection and Youth Services under the Department of Children, Seniors and Social Development, referenced by the Complainant as “CYS”, and
- communications regarding the Complainant and her children with the named French school.

[7] For the former category, in its response to this Office, NLESD advised: “With respect to correspondence with CYS, NLESD could neither confirm nor deny the existence of that information, under subsection 17(2) ... the District should have identified this on the final response letter.”

[8] For the latter communications category, NLESD stated it had initially believed it had no records responsive to the Complainant’s request. In its submissions to this Office, it noted it had searched the emails of staff involved in the children’s transfer to the CSF, including board office staff as well as staff from the NLESD school the children attended at the time, and found only correspondence among its own staff, but none between NLESD and the named French school. NLESD confirmed that it had searched all records with the Complainant and children’s last name for the period from when the children enrolled with the NLESD until the children transferred to a new school under the CSF.

[9] On an additional review following receipt of this complaint, NLESD did find copies of consent forms faxed from CSF to NLESD and the children’s previous school under the NLESD. NLESD acknowledged it determined these would be responsive to this portion of the request and that it should provide them to the Complainant. Additionally, NLESD noted its email retention schedule is four years and part of the request falls outside this period and it is possible additional responsive emails existed at one time but they have since been deleted per its retention schedule.

[10] During this investigation, NLESD provided the Complainant with a new final response that more accurately reflected the above analysis. This new response noted that for the first portion of her request (her children's files), NLESD has no responsive records as its original files were transferred to the CSF. Additionally, NLESD cited section 17(2) to neither confirm nor deny the existence of records of communication between NLESD and CYS. Finally, NLESD provided the four pages of newly found correspondence (consent forms faxed between the CSF and the former school) to the Complainant as records responsive to the portion of the request regarding communications with the named French school, noting these were found after an additional exhaustive search.

COMPLAINANT'S POSITION

[11] The Complainant submitted that she did not agree with the initial final response from NLESD, arguing that "[section] 108 allows a parent to receive information regarding her children." She went on to note she did not see how disclosure would interfere with anyone's privacy.

DECISION

[12] The portions of *ATIPPA, 2015* relevant to our review are as follows:

13.(1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

(2) The applicant and the head of the public body shall communicate with one another under this part through the coordinator.

...

17.(2) Notwithstanding paragraph (1)(c), the head of a public body may in a final response refuse to confirm or deny the existence of

(b) a record containing personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of a third party's personal privacy under section 40 ; or

(c) a record that could threaten the health and safety of an individual.

...

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.*

...

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

(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

[13] In Report A-2023-013 earlier this year, this Office re-stated the findings of Report A-2022-032, among many previous reports, that noted the standard applied to a search for documents by a public body is one of reasonableness, not perfection. As stated in A-2022-30, in proving it has met this standard, it is important that the public body provide information to this Office on what steps it took in conducting its search so that this Office can make a proper determination regarding compliance with section 13.

[14] The secondary search conducted by NLESD after receipt of this complaint was thorough. The request was specific, and the discovery of just four records does not appear unusual, given: the transfer of files between school districts; the search period extends beyond NLESD's email retention schedule; and NLESD acknowledged it did find records of communications about the Complainant and her children among its own staff, just not any additional records between its staff and the named French school which would be responsive to the Complainant's request.

[15] With respect to the communications requested, the ATIPP Coordinator identified several employees whose emails were searched, including Board staff as well as staff at the school the children formerly attended, and located the four pages of faxed consent forms which were provided to the Complainant. NLESD's willingness to complete a second review and search, and to include in this search staff outside the Board itself at the children's former school, speaks to its efforts to conduct a reasonable search.

[16] Additionally, NLESD advised that a student's file travels with them; that it is standard practice for the district to transfer a student's file with the student if they make a move to a

different school district. In this particular case, the Complainant had also already made a request with the CSF for the same records and that district was the proper entity to respond to this portion of the request. The NLESD clarified this in its revised final response.

[17] Given that NLESD did not have records responsive to the portion of the request seeking the children's files, it was unnecessary for it to review the application of section 108 of the legislation.

[18] Finally, this Office accepts the position of NLESD in applying section 17(2) to neither confirm nor deny the existence of records responsive to the portion of the Complainant's request seeking any communications between it and CYS in relation to the Complainant and her children. If such records exist they would, on their face, trigger the application of sections 17(2)(b) and (c), and this Office is satisfied that NLESD has properly applied that provision.

[19] Given all of the above, as well as NLESD's provision of a revised final response and the four pages of responsive records found on its secondary review, NLESD did meet its duty to assist the Complainant pursuant to section 13 of *ATIPPA, 2015*.

RECOMMENDATIONS

[20] Under the authority of section 47 of *ATIPPA, 2015*, I find the Newfoundland and Labrador English School District has conducted a reasonable search for records and responded to the Complainant appropriately under section 13 of *ATIPPA, 2015*. Therefore, I recommend that the District maintain its position regarding these matters.

[21] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Newfoundland and Labrador English School District 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.

[22] Dated at St. John's, in the Province of Newfoundland and Labrador, this 6th day of July 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador