NEWFOUNDLAND AND LABRADOR

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT 2007-013

Memorial University of Newfoundland

Summary: The Applicant applied under the *Access to Information and Protection of Privacy Act* (the "*ATIPPA*") for access to records relating to the course preferences and the teaching assignments of faculty members at Memorial University of Newfoundland ("Memorial"). Memorial disclosed the teaching assignments to the Applicant but denied access to the course preferences. Memorial claimed that the course preferences contained the personal information of the faculty members because they contained information that constituted both the employment history of the faculty members pursuant to section 2(o)(vii) of the *ATIPPA* and their personal views or opinions pursuant to section 2(o)(ix). The Commissioner found that the course preferences did not contain information that constituted the employment history of the faculty members. The Commissioner also found that the course preferences did contain the personal views or opinions of the faculty members but, because the views or opinions were given in the course of performing services for Memorial, section 30(2)(h) allowed the disclosure of the personal information. The Commissioner, therefore, recommended the disclosure of the course preferences to the Applicant.

Statutes Cited: *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A – 1.1, as am, ss. 2(o), 3, 7, 30, 46, 47, and 64; *Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, s. 24.

Authorities Cited: Newfoundland and Labrador OIPC Reports 2007-001 (2007) and 2007-003 (2007); Ontario OIPC Order R-980015 (1998); British Columbia OIPC Order 02-45 (2002); Alberta OIPC Order F2004-015 (2005) and Saskatchewan OIPC Report F-2006-004 (2006).

Other Sources Cited:

Concise Oxford English Dictionary, 10th Edition, Revised, New York: Oxford University Press (2002);

The *Merriam-Webster Online Dictionary* (available at http://www.m-w.com);

Collective Agreement between Memorial University of Newfoundland and the Memorial University of Newfoundland Faculty Association (MUNFA) – September 1, 2002-August 31, 2005. Available at http://www.mun.ca/humanres/CA_0205_MUNFA.pdf.

I BACKGROUND

[1] Under authority of the *Access to Information and Protection of Privacy Act* (the "*ATIPPA*") the Applicant submitted an access to information request dated 17 April 2007 to Memorial University of Newfoundland ("Memorial"), wherein the Applicant requested access as follows:

> *1. (a) copies of all course preferences mentioned by all faculty members in mechanical engineering since the course preferences have been requested by the Administration, and (b) the courses assigned by the Administration to them corresponding to these preferences.*
>
> *2. I would like to have the teaching assignments of* [*four Faculty members*] *since they started teaching in the faculty of engineering at Memorial University.*

[2] A brief explanation of the records requested by the Applicant is necessary. The records containing the teaching assignments consist of the name and number of the courses that a faculty member has been assigned to teach in an academic year. The records containing the course preferences consist of a list provided by each faculty member indicating the courses that the faculty member would be able to teach during the academic year. The practice of submitting the list of preferred courses to the Administration of the Faculty of Engineering and Applied Science was begun for the academic year 2006-2007.

[3] Memorial has disclosed the requested teaching assignments to the Applicant but has refused disclosure of the course preferences. A letter dated 20 April 2007 sent to the Applicant by Memorial indicated that access to the course preferences was being denied because the information sought was the personal information of the faculty members since it constitutes their employment history and was, therefore, excepted from disclosure pursuant to section 30(1) of the *ATIPPA*. Memorial has subsequently taken the position that the information is personal information since it constitutes the personal views or opinions of the individual faculty members.

[4] The Applicant in a Request for Review dated 21 April 2007 and received in this Office on 26 April 2007 has asked for a review of Memorial's decision to deny access to the course preferences.

[5] Attempts to resolve this Request for Review by informal means were not successful. On 17 July 2007 the Applicant and Memorial were both advised that the Request for Review had been referred for formal investigation pursuant to section 46(2) of the *ATIPPA* and both were given the opportunity to provide written submissions to this Office pursuant to section 47.

II APPLICANT'S SUBMISSION

[6] The Applicant's submission is set out in an e-mail dated 26 July 2007, in which the Applicant simply states that in his opinion there has been a continuous problem obtaining information from the administration at Memorial under the *ATIPPA*, particularly information from the Faculty of Engineering.

III PUBLIC BODY'S SUBMISSION

[7] The submission of Memorial is set out in correspondence dated 3 August 2007, in which Memorial acknowledges that it is prepared to disclose the teaching assignments because the information in them is about the functions of employees within the meaning of section 30(2)(f) of the *ATIPPA.* Memorial further indicates that the teaching assignments are provided to all faculty members for each term and would, therefore, have been provided to the Applicant previously.

[8] In relation to the course preferences, Memorial submits that they contain the personal information of the faculty members and that it is required pursuant to section 30(1) of the *ATIPPA* to refuse their disclosure. In order to provide a clear understanding of the position of Memorial I will quote extensively from its written submission as follows:

Background

Faculty members usually are capable of and have experience in teaching a number of different courses on offer in a given semester. The normal teaching workload in a semester is two-three courses. Teaching assignments are made each term by the Administrative Head, the Dean in the case of the Faculty of Engineering, in accordance with the Collective Agreement between Memorial University of Newfoundland and the Memorial University of Newfoundland Faculty Association.

When it is possible to accommodate faculty members personal preferences for teaching assignments, or faculty member's assigned administrative responsibilities or personal circumstances such as health issues or family issues the Dean will endeavour to do so.

The records which are the subject of this Review are personal expressions by individual employees of their preferences for work assignments.

Is it personal information?

The ATIPP Act definition of personal information is "recorded information about an identifiable individual," followed by a number of examples of the types of information that would meet the definition.

The information which is the subject of this ATIPP Request and Review is correspondence from faculty members in the Faculty of Engineering and Applied Science to the Dean. The email/memos were sent to the Dean in response to his May 2006 email asking them to indicate which courses they were capable of teaching and to express, in order of choice, those assignments which they prefer for the 2006-2007 academic year. Each responsive record contains the name of the faculty member and their preferences for work assignments.

The subject information is not general information about a position like professor or assistant professor, etc., nor is it personal information about another individual. It does not reveal actions of employees in carrying out their job duties and responsibilities, nor interactions with fellow employees or students, and it is not an activity which forms part of their official job functions.

Rather, the information is an expression by employees of their views of their own abilities to teach certain courses and their preferences in respect of their job assignments. It is recorded information about an identifiable individual, meeting the definition of "personal information."

Is the University required to withhold the records under section 30?

Section 30 requires the University to withhold third party personal information. However, this mandatory exception to disclosure is limited by subsection (2). Of particular relevance in this case are 30(2)(f) and (h).

30(2)(f)

Under 30(2)(f), the University cannot withhold "information about a third party's position, functions or remuneration as an . . . employee" of the University.

A position of employment generally carries with it a title, a job description, and a salary range. It may be associated with a list of duties or functions and an outline of responsibilities or accountabilities in the context of the position's reporting relationship with other positions in the organization. The decision and activities of the person holding the position would be made by whoever is in the position. Section 30(2)(f) is intended to prevent a public body from withholding information about a position and its functions and remuneration.

BC's Commissioner described job functions as follows in 54-95 (also cited in 97-96 and 00-53):

> *Information about the "position, functions or remuneration" means general information about exactly that. The public has a right to know about job descriptions and job qualifications in general terms, not the private information of a public servant with respect to these topics.*

The subject information in this Review does not reveal information about faculty members' position, functions or remuneration, since the specific functions would not be known until after the Dean had made a final decision respecting course assignments. The actual course assignments given, following deliberations by the Office of the Dean on all relevant factors, may or may not accommodate the preferences expressed by faculty. The preferred work assignments may or may not be given and, therefore, may not reflect actual work assignments, i.e., the employee's "position, functions, or remuneration."

In 97-96, BC's Commissioner made a distinction between "behaviour of individuals" and "tangible activities in the workplace such as research projects and related activities," where the information is "descriptive of what individuals did in their workplaces on particular projects." In the case under Review here, an expression of preferences for work assignments is hypothetical and does not reveal tangible activities in the workplace. Once courses are assigned, then this information would, of course, fall under "tangible activities in the workplace."

30(2)(h)

Under 30(2)(h), the University cannot withhold information which would reveal "the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual."

Unfortunately, none of the access and privacy statutes in other jurisdictions of Canada (to this writer's knowledge) contains a similar limitation on the protection of personal information; as a result, little interpretation is available to guide the application of this provision in the present case under Review.

The course assignment preferences expressed by the faculty are not "opinions or views . . . given in the course of performing a service." Rather, the information has more of a human resources character than the performance of a service. I refer to the decision of the Provinces's Information and Privacy Commissioner in 2007-001:

> *[45] . . . I do not believe that making a harassment complaint is a service performed for a public body, but instead, something of a more personal nature entailing human resources policies, employee discipline, and the like.*

Not all actions and activities of employees are "functions" and not all opinions expressed are "services performed." Similarly, the expression by faculty members of their preferences for work assignments do not reveal employee functions and are not services performed.

[9] In conclusion, Memorial takes the position that the information in the course preferences contains the faculty members' personal views of their own experience and ability to teach certain courses and their expressions of preferences for work assignments. Therefore, the information is personal information as defined in paragraph (ix) of section 2(o). The views and preferences expressed do not constitute a service for the university because the nature of the information is human resource-related and designed to assist management in determining work assignments. Therefore, the exception in paragraph (h) of section 30(2) is not applicable. As a result, the information in the course preferences is personal information and Memorial is required under section 30(1) to deny access to the information.

IV DISCUSSION

[10] Before discussing the issues arising in this Request for Review, I will make some general comments on the *ATIPPA.*

[11] The purposes of the *ATIPPA* are set out in section 3, as follows:

> *3. (1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by*
>
> *(a) giving the public a right of access to records;*
>
> *(b) giving individuals a right of access to, and a right to request correction of personal information about themselves;*
>
> *(c) specifying limited exceptions to the right of access;*
>
> *(d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and*
>
> *(e) providing for an independent review of decisions made by public bodies under this Act.*
>
> *(2) This Act does not replace other procedures for access to information or limit access to information that is not personal information and is available to the public.*

[12] Section 7 of the *ATIPPA* establishes the principle that there is a general right of access to records in the custody or control of a public body, subject to limited and specific exceptions, as follows:

> *7. (1) A person who makes a request under section 8 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.*
>
> *(2) The right of access to a record does not extend to information exempted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.*
>
> *(3) The right of access to a record is subject to the payment of a fee required under section 68.*

[13] Section 64 of the *ATIPPA* sets out the burden of proof to be applied on a Request for Review made to the Information and Privacy Commissioner as follows:

> *64. (1) On a review of or appeal from a decision to refuse access to a record or part of a record, the burden is on the head of a public body to prove that the applicant has no right of access to the record or part of the record.*
>
> *(2) On a review of or appeal from a decision to give an applicant access to a record or part of a record containing information that relates to a third party, the burden is on the third party to prove that the applicant has no right of access to the record or part of the record.*

[14] A reading of sections 3, 7, and 64 indicates that the purpose of the *ATIPPA* is to make public bodies more accountable to the public by giving the public a general right of access to records in the custody of or under the control of a public body subject only to limited and specific exceptions. When a public body has denied access to a record and the Applicant has requested a review of that decision by the Information and Privacy Commissioner then the public body bears the burden of proving that the applicant has no right of access to the record or part of the record pursuant to section 64(1).

[15] As I discussed in my Report 2007-004, the *ATIPPA* does not set out a level or standard of proof that has to be met by a public body in order to prove that an applicant has no right of access to a record under section 64(1). In my Report 2007-004, I adopted the civil standard of proof as the standard to be met by the public body under this section. In order for the public body to meet the burden of proof in section 64(1), the public body must prove on a balance of probabilities that the applicant has no right to the record or part of the record.

[16] I will now discuss the issues before me in this Request for Review.

[17] Memorial takes the position that the course preferences submitted to the Dean by the faculty members contain personal information and, therefore, are excepted from disclosure by section 30(1) of the *ATIPPA*, which provides as follows:

> *30. (1) The head of a public body shall refuse to disclose personal information to an applicant.*

[18] In its letter dated 20 April 2007 denying disclosure to the Applicant, Memorial indicated that the information in the course preferences was the personal information of the faculty members "since it constitutes their employment history." Memorial in its submission now takes the position that the information in the course preferences is personal information because it represents "an expression by employees of their views of their own abilities to teach certain courses and their preferences in respect of their job assignments."

[19] Personal information is defined in section 2(o) of the *ATIPPA*. In light of the positions put forth by Memorial suggesting that the course preferences contain the personal information of the faculty members, it is necessary to discuss paragraphs (vii) and (ix) of section 2(o), which provide as follows:

> *2. (o) "personal information" means recorded information about an identifiable individual, including*
>
> . . .
>
> (*vii) information about the individual's educational, financial, criminal or employment status or history,*
>
> . . .
>
> *(ix) the individual's personal views or opinions;*

[20] I will first discuss whether the course preferences contain information about the faculty members' employment history pursuant to section 2(o)(vii).

[21] The Ontario Information and Privacy Commissioner discussed the meaning of the term "employment history" in Order R-980015 by stating at page 16:

> *The Commissioner's orders have consistently found that discrete pieces of information which might reveal information about a particular episode in a person's employment do not constitute "employment history" for the purposes of sections 2(1)(b) and 21(3)(d) of the Act. (Orders P-235, P-611 and P-1180). As explained by Inquiry Officer John McCamus in Order 170:*

> *The Ministry seeks a severance of references in this document identifying Ministry employees who were interviewed by the Office of the Ombudsman with respect to a complaint made by the requester. The Ministry seeks a severance on the basis that information relates to "employment history" within the meaning of subsection 21(3)(d). In my view, this gives the notion of employment history too broad a reading. The statutory notion of employment history appears to relate to what might be referred to as "personnel matters" and should not, in my view, be construed to include every action of an individual employee which might cumulatively be said to constitute that employee's "history". ... The mere fact that a named public servant has performed or undertaken a specific particular task is not "employment history" in the requisite sense.*

[22] The view of the Ontario Commissioner that the term "employment history" relates to personnel matters was also expressed by the British Columbia Information and Privacy Commissioner in Order 02-45 where the Commissioner stated at paragraph 21:

> *[21] Nothing in the unsevered tables reveals anything about the things one normally associates with the term "employment history", such as work history, performance reviews or evaluations, disciplinary actions taken, reasons for leaving a job, leave transactions and so on.*

[23] The Alberta Information and Privacy Commissioner has taken a similar view as the British Columbia and Ontario Commissioners with regard to the meaning of the term "employment history". In Order F2004-015, the Alberta Commissioner stated at paragraphs 81-82:

> *[para 81] According to Order 2000-029: "employment history" in section 17(4)(d) is a broad, general phrase that covers information pertaining to an individual's work record. Order F2003-005 held that the term "employment history" describes a complete or partial chronology of a person's working life such as might appear in a resumé or personnel file.*

[24] I will apply the interpretation of the term "employment history" that has been given by the Commissioners of Ontario, British Columbia, and Alberta. Therefore, in order for information to be about an individual's "employment history" within the meaning of section 2(o)(vii) of the *ATIPPA* that information must relate to an individual's work history and must be the type of information that would be found in an employee's personnel file. I have reviewed the course

preferences submitted by the faculty members and find that they do not contain information about the faculty members' work history. The information in the course preferences is not the type of information that would be found in a personnel file such as performance reviews or evaluations, disciplinary actions taken, reasons for leaving a job, or leave transactions. Rather, the information has been provided by the faculty members as part of their regular duties and, in fact, provided in compliance with a request from the Dean, who is the Administrative Head of the Faculty of Engineering and Applied Science.

[25] The distinction between information provided by employees as part of their regular duties and personal information was discussed by the Ontario Information and Privacy Commissioner in Order R-980015. The Commissioner made the following comments on pages 4-6:

> *. . . Nonetheless, in order to qualify as "personal information", the fundamental requirement is that the information must be "about an identifiable individual" and not simply associated with an individual by name or other identifier. It is apparent, therefore, that while the meaning of "personal information" may be broad, it is not without limits.*
>
> *. . .*
>
> *The distinction between personal information and other information associated with an identifiable individual has also been considered by the Commissioner in the context of information relating to an individual's professional, employment or official government capacity in both public and private sector settings. The Commissioner's orders have established that, as a general rule, a record containing information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or a private sector setting, is not the individual's personal information simply because his or her name appears on the document.*
>
> *. . .*
>
> *On the other hand, where it is clear that the government employee or official is acting in his or her official capacity, references to employees in records <u>generated in the normal course of business</u> have been found not to be about the individual and, therefore, did not qualify as personal information (Orders 139, P-157, P-257, P-326, P-377, 194, M-82, P-477 and P-470).*
>
> [emphasis added]

[26] The course preferences contain information "generated in the normal course of business" of the Faculty of Engineering and Applied Science. The Dean, as Administrative Head of the Faculty, consulted with the faculty members about their teaching preferences as part of his

obligations under Article 3.11 of the Collective Agreement then in effect between Memorial University of Newfoundland and the Memorial University of Newfoundland Faculty Association, which provides as follows:

> *3.11 (a) The Administrative Head shall indicate the courses that ought to be offered in the upcoming Academic Year and shall consult with the Faculty Members in the Academic Unit concerning which of these courses they wish to teach. The Administrative Head shall indicate in writing to the Faculty Members that this is preliminary to the assignment of teaching workload.*
>
> *(b) The Administrative Head shall then make a preliminary assignment of the number of courses and the particular courses to be taught by each Faculty Member and circulate this preliminary list of all teaching assignments to all Faculty Members and invite comments.*
>
> *(c) After giving consideration to these comments, the Administrative Head shall notify each Faculty Member in writing of his or her teaching assignments. These assignments shall be fair and equitable when viewed over a two (2) year period.*

[27] At this point, I would like to comment on the following statement made in Memorial's submission about the faculty members employment duties:

> *The subject information is not general information about a position like professor or assistant professor, etc., nor is it personal information about another individual. It does not reveal actions of employees in carrying out their job duties and responsibilities, nor interactions with fellow employees or students, and it is not an activity which forms part of their official job functions.*
>
> [emphasis added]

[28] These comments from Memorial put forth a different view of the responsibilities and functions of the faculty members than the view I would take. In my view, the faculty members were providing the information in the course preferences as part of "their job duties." It was part of "their official job functions" to comply with a request from the Dean who, as Administrative Head, was performing his duties in compliance with the terms of the Collective Agreement.

[29] Thus, the course preferences are submitted to the Dean by the faculty members as part of their employment duties and in accordance with a process mandated by the Collective Agreement. I find that the information in the course preferences is not part of the employment history of the faculty members and is not, therefore, the personal information of the faculty members pursuant to section 2(o)(vii).

[30] I will now discuss Memorial's submission that the information in the course preferences constitutes personal information because it is "an expression by employees of their views of their own abilities to teach certain courses and their preferences in respect of their job assignments." Memorial has not specifically stated that it is relying on paragraph (ix) of section 2(o) of the *ATIPPA* in its submission, but it appears that Memorial is suggesting that the course preferences represent the faculty members "personal views or opinions" as set out in paragraph (ix). My discussion, therefore, is in the context of this provision.

[31] As indicated in Memorial's submission, the information in the course preferences was sent to the Dean in e-mails and memos from the individual faculty members. The information was provided in response to the Dean's e-mail dated 15 May 2006, which stated in part:

> *At this stage I am requesting that you provide* [*the Associate Dean*] *with a list of 8 courses, including up to 2 graduate courses, from the attached lists that you would be able to teach and we will endeavor to assign your teaching from among that set of courses. You may also wish to indicate an order of preference among these course.*
>
> [emphasis added]

[32] Memorial submits that the information in the e-mails and memos sent to the Dean by the faculty members represents the personal views or opinions of the faculty members and is, therefore, personal information within the meaning of paragraph (ix) of section 2(o).

[33] The Saskatchewan Information and Privacy Commissioner in Report F-2006-004 discussed the meaning of the word "opinion." In commenting upon section 24(1)(f) of the Saskatchewan's *Freedom of Information and Protection of Privacy Act*, which provides that personal information

includes "the personal opinions or views of the individual except where they are about another individual," the Commissioner stated as follows at paragraph 43:

> [43] *The Alberta Annotated FOIP Act, page 5-1-10, characterizes an "opinion" as follows*:
>
> > *An "opinion" is a belief or assessment based on grounds short of proof; a view held as probable. An "opinion" is subjective in nature, and may or may not be based on fact. An example of an "opinion" would be a belief that a person would be a suitable employee, whether or not the opinion is based on the person's employment history.*

[34] The *Concise Oxford English Dictionary*, Tenth Edition, defines "opinion" as meaning "a view or judgement not necessarily based on fact or knowledge." It defines "view" as meaning "a particular way of regarding something; an attitude or opinion."

[35] The *Merriam-Webster On-line Dictionary* defines "opinion" as meaning "a view, judgment, or appraisal formed in the mind about a particular matter." It defines "view" as meaning "an opinion or judgment colored by the feeling or bias of its holder."

[36] Having considered the above definitions of what constitutes an opinion or a view, I find that the information in the course preferences does constitute the personal views or opinions of the faculty members. The information represents the judgment or appraisal of the faculty member as to the courses the faculty member "would be able to teach" during the academic year 2006-2007. Therefore, the course preferences do contain personal information as defined in section 2(o)(ix) of the *ATIPPA*.

[37] Having determined that the course preferences contain personal information, I will now look to section 30(2) of the *ATIPPA*, which provides for a number of exceptions to the mandatory prohibition against the disclosure of personal information set out in section 30(1).

[38] Memorial submits that paragraphs (f) and (h) of section 30(2) are not applicable to the information in the course preferences.

[39] Section 30(2) of the *ATIPPA* provides in part:

> *30. (2) Subsection (1) does not apply where*
>
> . . .
>
> *(f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;*
>
> . . .
>
> *(h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;*

[40] First, I will discuss the applicability of section 30(2)(h) to the information contained in the course preferences.

[41] Memorial in its submission states that none of the other jurisdictions in Canada has a provision similar to section 30(2)(h). While it is true that there does not appear to be a provision with exactly the same wording in other access to information legislation, section 24(2)(c) of the Saskatchewan *Freedom of Information and Protection of Privacy Act* has similar wording and a comparable purpose. Section 24(2)(c) provides as follows:

> *24.* (*2) "Personal information" does not include information that discloses:*
>
> . . .
>
> *(c) the personal opinions or views of an individual employed by a government institution given in the course of employment, other than personal opinions or views with respect to another individual;*

[42] In Report F-2006-004, the Saskatchewan Information and Privacy Commissioner discussed the effect of 24(2)(c) by stating at paragraph 44:

> *[44] . . . b. If you are not an employee of a public body, your personal opinion or view (not involving another individual) is your own personal information. However, as per subsection 24(2)(c), if offered by a government employee in the course of employment, these will not be considered the employee's personal information.*

> *This is due to the fact that the individual is only offering his/her opinion or view as part of his/her employment responsibilities, not in a personal capacity.*

[43] Also in Report F-2006-004, the Saskatchewan Commissioner explained why the views or opinions of government employees expressed during the course of their employment are not usually considered to be their personal information. The Commissioner stated at paragraph 45:

> *[45] In our Report F-2006-001 at paragraph [95], I clarified that names, job titles, and views or opinions of government employees "would not typically be treated as personal information by reason of section 24(2) of the Act". I elaborated further on this point at paragraph [113] as reproduced below:*
>
> > *In determining which information should be severed as "personal information", we have considered the following:*
> >
> > *(1) Personal information subject to the Act does not include information that can be described as "work product". . . . By "work product" we mean information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business.*

[44] This distinction between personal information and work product was discussed in my Report 2007-003, where I stated at paragraphs 133-134:

> *[133] I find these arguments to be convincing and I agree that a distinction between personal information and work product information is appropriate when determining whether information should or should not be withheld under section 30(1). I also agree that in the case before me there is information that may prima facie appear to be personal information, but in my opinion constitutes the work product of the individuals named and, as a result, is not information "about" the individual as contemplated by section 2(o). For this reason, I have concluded that such information is not "personal information" for the purposes of section 30(1) and, as such, I am recommending that it be released to the Applicant.*
>
> *[134] Where information is determined to be "about" an individual rather than the tangible result of that individual's work activity, I must then look to the provisions of section 30(2). . . .*

[45] Also in my Report 2007-003, I discussed the concept of work product in relation to section 30(2)(h) at paragraph 135:

> *[135] With respect to section 30(2)(h), I have determined that a number of opinions and views of individuals identified in the responsive record have been given in the course of performing a service for Memorial. As referenced by the Applicant, this provision contains no requirement that there be a contract to perform those services, only a requirement that the services are performed by a third party. This would include both paid and non-paid services. . . . If the opinions or views are about the individual's 'work product', …that information is not 'about' the individual and must be disclosed."*

[46] As a result, I find that section 30(2)(h) is applicable to the information in the course preferences. The opinions or views in the course preferences were given by the faculty members "in the course of performing services for a public body." In other words, when the faculty members provided the information in the course preferences they did so as part of their regular employment duties, which included responding to a request from the Dean. The information is part of the work product of the faculty members. It is not information about the faculty members and is, therefore, not information about identifiable individuals.

[47] Memorial takes the position in its submission that the course preferences indicated by the faculty members are not opinions or views given in the course of performing a service, but rather have more of a human resource character. In support of this position Memorial relies on my comments in paragraph 45 of Report 2007-001.

[48] My comments in Report 2007-001 were made in the context of deciding whether information contained in a harassment complaint constituted personal information. I stated at paragraphs 44-45:

> *[44] One potential source of clarification in the ATIPPA which might be useful in slightly different circumstances is found in section 30(2)(h):*
>
> *… the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual.*
>
> *[45] This clarifies that a public body cannot withhold the personal information of an applicant if the personal information constitutes the opinions or views of a person given in the course of performing services for a public body. The "except"*

> *in this provision refers to a situation where the person giving the opinion or view is doing so about a person other than the Applicant, ie, a third party. I do not see this as resolving the current matter, however, because a complaint of harassment, even if it involves an expository element which recounts things that happened in the course of performing services for the public body, this particular account of those events was compiled for the specific purpose of making a complaint. I do not believe that making a harassment complaint is a service performed for a public body, but instead, something of a more personal nature entailing human resources policies, employee discipline, and the like.*

[49] My comments in Report 2007-001 do not support the position taken by Memorial. I clarified in paragraph 45 of that Report that section 30(2)(h) provides that a public body cannot withhold personal information if it constitutes the opinions or views of a person given in the course of performing services for a public body. The faculty members at Memorial were performing their regular duties as employees of Memorial when they gave their opinions or views with respect to course preferences. The persons who made the harassment complaint referred to in Report 2007-001 were not performing their regular employment duties by making such a complaint.

[50] In light of my finding regarding the applicability of section 30(2)(h), I do not need to discuss the applicability of section 30(2)(f) which provides another exception to the mandatory prohibition against the disclosure of personal information set out in section 30(1).

V CONCLUSION

[51] I conclude that the information in the course preferences is not about the individual faculty member's employment history and, therefore, it is not considered to be personal information as defined in paragraph (vii) of section 2(o) of the *ATIPPA*.

[52] I further conclude that the information in the course preferences does constitute the individual faculty member's personal views or opinions and, therefore, it is considered to be personal information as defined in paragraph (ix) of section 2(o) of the *ATIPPA*. However, these personal views or opinions were given in the course of the faculty members performing services for Memorial and, therefore, by the operation of section 30(2)(h) the mandatory non-disclosure rule in section 30(1) does not apply to the information in the course preferences.

[53] Therefore, I conclude that Memorial has not met the burden of proof required by section 64(1) of the *ATIPPA* and has not, therefore, proven that the Applicant has no right of access to the course preferences.

VI RECOMMENDATIONS

[54] Under the Authority of section 49(1) of the *ATIPPA*, I hereby recommend that Memorial University of Newfoundland provide the Applicant with a copy of each of the course preferences submitted by the faculty members in mechanical engineering in the Faculty of Engineering and Applied Science. I note that attached to the e-mail from one faculty member is another e-mail dealing with a student's deferred examination. The information in that e-mail is not responsive to the Applicant's request and it should not to be disclosed.

[55] Under authority of section 50 of the *ATIPPA* I direct the head of Memorial University of Newfoundland to write to this Office and to the Applicant within 15 days after receiving this Report to indicate Memorial's final decision with respect to this Report.

[56] Please note that within 30 days of receiving a decision of Memorial under section 50, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador, Trial Division in accordance with section 60 of the *ATIPPA*.

[57] Dated at St. John's, in the Province of Newfoundland and Labrador, this 10th day of October 2007.

Philip Wall
Information and Privacy Commissioner
Newfoundland and Labrador