



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2018-010

May 1, 2018

Newfoundland and Labrador English School District

Summary:

An Applicant (a parent) requested from the Newfoundland and Labrador English School District all records relating to an incident of bullying involving the Applicant's child, including the names of the involved parties. The School District provided responsive records, but severed all identifying information of other students, as well as records of correspondence with the parent of one particular student, as personal information subject to section 40 of the *ATIPPA, 2015*. The School District also withheld correspondence with the parent of the third party student on the basis that section 12 of the *Schools Act, 1997* takes precedence over the *ATIPPA, 2015* in accordance with section 7 and Schedule A of the *ATIPPA, 2015*. The Commissioner found that the School District properly withheld records from the Complainant.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015, S.N.L. 2015, c. A-1.2](#), ss. 7, 40; [Schools Act, 1997, SNL 1997, c S-12.2](#), ss. 2, 12.

Other Authorities:

NLESD PROG-310: Student Records.

I BACKGROUND

- [1] The Applicant made an access to information request to the Newfoundland and Labrador English School District (the “School District”) as follows:

... I was advised that my [child] had been the victim of [bullying] at [named school]. I would like copies of all documents held at the school or the District Office in relation to this incident, including names of all people this incident was discussed with.

- [2] The School District advised the Applicant that the following records were responsive to the request:

1. The school Principal’s incident summary;
2. E-mail correspondence between the school Principal and the parent of the other student;
3. Correspondence between the school Principal and the parent of the other student regarding consequences for violating school policies;
4. The school Guidance Counsellor’s case records relating to the incident;
5. Correspondence between the school Guidance Counsellor and the Applicant’s spouse; and
6. Copies of relevant school and School District policies.

- [3] Access to the first record was provided subject to severing the personal information of third parties pursuant to section 40 of the *ATIPPA, 2015*. The sixth record was released in full and the Applicant advised that they did not require a copy of the fifth record. The remaining records were withheld in their entirety on the grounds that they were protected from disclosure by the *Schools Act, 1997*.

- [4] The Applicant filed a complaint with this Office. In the course of our investigation, the School District provided the Complainant with access to the Guidance Counsellor’s notes from the file of the Complainant’s child (which form part of the fourth record), subject to severing the personal information of third parties. The Complainant remained dissatisfied. As an informal resolution could not be reached, the complaint proceeded to formal investigation in accordance with section 44 of the *ATIPPA, 2015*.

II PUBLIC BODY'S POSITION

- [5] The School District submits that the *ATIPPA, 2015* specifically provides for the *Schools Act, 1997* to override the access to information process in the case of "student records" contained in a student's file.
- [6] Further, the School District submits that the further information sought by the Complainant is the personal information of third parties, and in particular third parties who are children, and such information must be afforded protection from disclosure.

III THE COMPLAINANT'S POSITION

- [7] The Complainant submits that they are concerned about the safety of their child and that they ought to have access to all information and records related to the incident of bullying, including the name of the third party student.

IV DECISION

Schools Act, 1997

- [8] Section 7 of the *ATIPPA, 2015* states that in the event of any conflict between it and other provincial legislation, the *ATIPPA, 2015* shall prevail. However, section 7 also provides for certain enumerated provisions to prevail over the *ATIPPA, 2015* in the case of such conflict. These provisions are listed in Schedule A and include sections 12 and 62(2) of the *Schools Act, 1997*.
- [9] The relevant provisions of the *Schools Act, 1997* for the purpose of this Report are sections 2(u) and 12, which state:

2(u) "student record" means a record of information in written or electronic form pertaining to a student

...

12. (1) *A student record shall be maintained for each student in the manner required by a policy directive of the minister.*

(2) *Except as provided in this section a student record may only be reviewed by*

- (a) *the parent of the student; or*
- (b) *the student, if the student is 19 years of age or older,*

to whom that student record pertains.

(3) *A parent or student, if the student is 19 years of age or older, shall review the student record at a time and with a person designated by the board and receive an explanation and interpretation of information in the student record from that person.*

(4) *A parent or student, if the student is 19 years of age or older, who is of the opinion that the student record contains inaccurate or incomplete information may request the principal to review the matter.*

(5) *A student record may be used by the principal and teachers of a school and by board employees to assist in the instruction of the student to whom that student record pertains.*

(6) *Without the written permission of the parent of a student, or the student if the student is 19 years of age or older,*

- (a) *a student record shall not be admissible in evidence in a trial, inquiry, examination, hearing or other proceeding except to prove the establishment, maintenance, retention or transfer of that student record; and*
- (b) *a person shall not be required to give evidence respecting the content of the student record in a trial, inquiry, examination, hearing or other proceeding.*

(7) *Notwithstanding subsections (1) to (6), a principal may use a student record to prepare information or a report*

- (a) *required under this Act; and*
- (b) *when requested in writing by a parent, or where a student is 19 years of age or older, the student or former student, for*
 - (i) *an educational institution, or*
 - (ii) *an application for employment.*

(8) This section shall not prevent the use of a report based upon a student record by the principal of a school attended by that student, or the board, for the purpose of a disciplinary proceeding commenced by the principal respecting the conduct of that student or a prosecution of an offence under this Act.

(9) An action shall not lie against a person who contributes test results, evaluations or other information to a student record where he or she acted in good faith within the scope of his or her duties.

[10] The *Schools Act, 1997* restricts access to “student records” to the parent or the student when the student is 19 years of age or older. Section 12(2) of that *Act* is permissive in the sense that the School District is not required to disclose the entire record upon request to the parent or the student – it simply restricts the parties who “may” review the record. Review of student records occur under the supervision of a person designated by the School District. Interestingly, section 12 is silent on whether, as part of that review, a parent or student may make notes on or take a copy of any portion of the student record.

[11] As section 12 of the *Schools Act, 1997* is listed in Schedule “A” to the *ATIPPA, 2015*, it notionally prevails to the extent there is any conflict between it and the *ATIPPA, 2015*. Much turns on the overlap, if any, between the terms “review” and “access”. The word “review” is not defined in the *Schools Act, 1997*. The word “review” is often limited to a viewing or a visual inspection. Interpreting it in that manner excludes any conflict with the *ATIPPA, 2015* as it addresses the ability to access copies of records. While I am inclined to the view that the *ATIPPA, 2015* applies unreservedly to “student records”, I need not decide the matter conclusively as even if correct, in these circumstances the result would be the same. It warrants noting that the *Schools Act, 1997* is rather dated on this topic given that we are now in an age of electronic records while paper records were the standard when it was drafted.

[12] Section 12 speaks to student records being maintained in a manner determined by the Minister and set out in a policy directive. However, the definition of a “student record” at section 2(u) is much broader.

[13] In terms of the minister’s designation of a student record, the School District provided its policy document (PROG-310: Student Records) which outlines which documents are part of

a student record. A student record contains records in two categories: a cumulative record and a confidential record:

1.6 The Cumulative File contains:

- a) The student's name as registered under the Vital Statistics Act or if the student was born in a jurisdiction other than Newfoundland and Labrador, the student's name as registered in that jurisdiction, and any other surnames by which the student is known.
- b) The names of the student's parent(s) or guardian(s).
- c) The birth date of the student.
- d) The gender of the student.
- e) The contact information (e.g. mailing address, phone numbers, email address) of the student and the student's parent(s) or guardian(s).
- f) The citizenship of the student and, if the student is not a Canadian citizen, the type of visa and its expiry date held by the student or proof of Landed Immigrant status.
- g) The names of all schools attended by the student and the dates of enrollment, if known.
- h) An annual summary of the student's achievement or progress in the courses and programs in which the student is enrolled (e.g. report cards, progress notes).
- i) Copies of the student's final Individual Education Plan (IEP) and/or record of accommodations for each year.
- j) Medical information necessary to be easily accessed in an emergency situation (e.g. procedure to follow if child is anaphylactic or diabetic).
- k) Documentation of file transfers.
- l) Consent forms.
- m) If a confidential file exists, its existence must be indicated in the cumulative file.

...

1.9 The Confidential File contains:

- a) Custody and access or other family status documents, if applicable.
- b) Confidential medical reports.
- c) Diagnostic, cognitive, speech-language, social, psycho-educational, emotional or behavioural test results or evaluations of the student, the date of the test, the name of the assessor or evaluator and a written summary of the results or any action taken as a result of the test or evaluation.

- d) Correspondence and reports from outside agencies deemed to be sensitive information.
- e) Documentation of suspensions.

[14] The Principal's incident summary and the Guidance Counsellor's notes are not captured by the categories of records in policy PROG-310. However, we are satisfied that the Guidance Counsellor's notes, being contained within a file maintained for a particular student are "a record of information in written or electronic form pertaining to a student". We are further satisfied that the other records (the correspondence with the parent of the other child) are "student records" within the definition of that term as set out in both the *Schools Act, 1997* and the School District's policy, and are not reviewable by anyone other than that student's parents or the student themselves once they are 19 years old. Assuming that section 12 of the *Schools Act, 1997* prevails, I agree with the decision of the School District to refuse access to the second, third and fourth records (as described in paragraph two above) as they form part of the third party student's file.

[15] The Complainant also takes issue with the information redacted from the Principal's incident summary and the Guidance Counselor's notes held in the file of the Complainant's child. Access to a "student record" is permissive, not mandatory. Assuming that section 12 of the *Schools Act, 1997* prevails, a parent cannot rely on the *ATIPPA, 2015* to review their own child's records beyond that which the School District chooses to permit pursuant to section 12(2) of the *Schools Act, 1997*.

[16] As referenced earlier, the issue of which legislation governs does not need to be conclusively determined here. If the *ATIPPA, 2015* prevails, section 40 of the *ATIPPA, 2015*, which lists mandatory exemptions for personal information, must be applied. The personal information of the other students in the file of the Complainant's child and the personal information in the files of the other students, falls within section 40, and is all exempt, as its disclosure would constitute an unreasonable invasion of their personal privacy. Having considered section 40 as a whole, including all considerations that may militate in favour of disclosure (including circumstances affecting a person's health or safety; or whether the personal information is relevant to a fair determination of the Complainant's rights), the case

for disclosure is insufficient to require the unreasonable invasion of personal privacy that such disclosure would represent.

V RECOMMENDATIONS

[17] Under the authority of section 47 of the *ATIPPA, 2015* I recommend that the Newfoundland and Labrador English School District continue to withhold the records which it previously refused to provide to the Complainant.

[18] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the 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 (in this case the Applicant) within 10 business days of receiving this Report.

[19] Please note that within 10 business days of receiving the decision of the School District under section 49, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador in accordance with section 54 of the *ATIPPA, 2015*.

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 1st day of May, 2018.



Donovan Molloy, Q.C.
Information and Privacy Commissioner
Newfoundland and Labrador