



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2019-008

March 26, 2019

Newfoundland and Labrador English School District

Summary:

The Complainant made a request to his child's school for a copy of his child's report cards and attendance records, as well as personal information, such as the student's address and an explanation of why the child had transferred schools. When the Complainant did not receive a response, he then contacted the NLESD for assistance. The school subsequently provided the Complainant with copies of the student's report cards and attendance records, but did not provide the Complainant with the remainder of the requested information. The Commissioner determined, under the *ATIPPA, 2015*, that the Complainant was not entitled to the requested personal information as disclosure would be an unreasonable invasion of the student's personal privacy (section 40). The NLESD also argued that the Complainant's request did not constitute a formal access request under the *ATIPPA, 2015*. The Commissioner determined the Complainant had made an access request under the *ATIPPA, 2015*, and that the NLESD failed to appropriately respond to the request.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015, S.N.L. 2015, c. A-1.2](#), ss. 7, 13, 40; [Schools Act, 1997, S.N.L. 1997, c S-12.2](#), ss. 2, 12, 20.

Authorities Relied On:

[NL Report A-2018-010](#); NLESD PROG-310: Student Records.

I BACKGROUND

[1] On November 13, 2018, the Complainant made a request to his child's school for the following information:

1. Why the student had transferred schools.
2. The address that was listed in the student's school file.
3. All reports and attendance records from the student's current and previous school.

The Complainant provided to the school's Assistant Principal a copy of his driver's license and the child's birth certificate to verify his identity and relationship to the student.

[2] On November 22, 2018, following the request to the school, the Complainant wrote to the Newfoundland and Labrador English School District's ("NLESD" or the "District") ATIPP Coordinator as he believed that the information was within the custody of the NLESD. It was his understanding that the school had been waiting for guidance from the District regarding release of the student's information. In his email to the NLESD ATIPP Coordinator, the Complainant stated "ATIPP" as the subject and included all the information that he had requested from the school. He explained that the school had not yet provided him with the information that he had requested, and asked the ATIPP Coordinator to advise. The ATIPP Coordinator responded that she would check into the matter and get back to him. The ATIPP Coordinator did not advise the Complainant that his request was not a request under the *ATIPPA, 2015*, nor did she explain how to make such a request.

[3] On November 27, 2018, the Assistant Principal at the student's school requested that the Complainant complete form 310-C ("Student Records Request Form"). The Complainant submitted the completed form to the school on November 28, 2018.

[4] The school provided to the Complainant copies of the student's high school report cards and attendance records on November 29, 2018 and December 4, 2018.

[5] On December 12, 2018, the Complainant wrote to the Assistant Principal requesting the student's registration information, including address.

- [6] The same day, this Office received a complaint stating he had requested information from his child's school but had only received copies of three report cards. He also noted that he had contacted the NLESD ATIPP Coordinator on November 22, 2018, but had not received a response from the NLESD at that point. The Complainant believed the lack of information constituted a refusal of access by the NLESD under the *ATIPPA, 2015*.
- [7] The Office of the Information and Privacy Commissioner ("OIPC") could not accept the complaint against the NLESD at that point. The legislated 20 business-day time period for a public body to respond to an access request had not yet passed since the request was made to the District. On December 22, 2018, having received no direct response from the NLESD after the 20 business-day time period, the Complainant again submitted his complaint to this Office.
- [8] 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

- [9] The NLESD states it never received a formal ATIPP request from the Complainant, but received a "student records request" seeking the student's grades, attendance, address and reason for transferring schools. The District states that the Complainant contacted the school directly to obtain the information he requested. The school then asked the Complainant to prove his relationship to the student, which he did by submitting a copy of his driver's licence and the child's birth certificate. The NLESD states that while it has a student records policy, access to records in custody or control of the District is governed by the *School's Act, 1997*. Further, the NLESD maintains that, under the *Schools Act, 1997*, "the District does have an obligation to provide parents, custodial or non-custodial, with educational information relating to their children," however, there is no obligation to provide unrelated personal information such as an address.

[10] The NLESD states that on November 27, 2018, the Assistant Principal at the school sent the Complainant a copy of Form 310-C to fill out and send back (which he did), in accordance with the NLESD Student Records Policy [PROG-310].

[11] Form 310-C Student Records Request states:

CUMULATIVE RECORD/CONFIDENTIAL FILE

*If you are a **current student** 19 years of age or older, or the parent/guardian of a current student under the age of 19 years, and you wish to obtain a copy of information from your student file, please contact your school directly. You will be required to submit this form [310C: Student Records Request Form] to the school.*

[12] The form further states that “Requests for copies of current (active) student records will normally be responded to within 7 business (school) days during the school year.” Within four business days of receiving the completed form, the Assistant Principal provided the Complainant with copies of the student’s report cards, which included attendance records.

[13] The NLESD states that section 20 (Parent rights and duties) of the *Schools Act, 1997* outlines that a parent of a current student is entitled to information about the students’ attendance, progress, and behaviour in school.

[14] Upon receipt of a “student records” request, the NLESD states that it has a legislative obligation to provide education information to a parent (as defined in the *Schools Act, 1997*), but not unrelated information such as an address or the reason the child changed schools. Additionally, in accordance with the NLESD’s related Student Records Policy (PROG-310) and its regulations, the NLESD sought permission from the student and the *de facto* custodial parent to provide further information to the student’s father, but permission was not granted by either.

[15] The District submits that the *Schools Act, 1997* provides for access to student records and furthermore that student records fall outside of the *ATIPPA, 2015*.

III COMPLAINANT'S POSITION

[16] The Complainant states that he only received three report cards from the student's school and did not receive the registration information he requested (specifically, the student's address and reason for transfer).

[17] The Complainant states that sections 12 (Student records) and 20 (Parent rights & duties) of the *Schools Act, 1997* entitles him to all information which he requested.

[18] The Complainant also submits that, as the biological father of the child, he is entitled to have the information provided to him in a timely fashion.

IV DECISION

[19] There are two issues to consider in this Report:

1. Whether the information was appropriately withheld from the Complainant.
2. Whether the Complainant filed an access request in accordance with the *ATIPPA, 2015*.

Whether the information was appropriately withheld from the Complainant

Schools Act, 1997

[20] The Complainant believes that as a parent of the student, he is entitled to the student's information under sections 12 and 20 of the *Schools Act, 1997*. Section 12 outlines who may review a student record, while section 20 further elaborates on parental rights:

Student records

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.

Parent rights & duties

20. (1) A parent of a student attending a school is entitled to

- (a) be informed of the student's attendance, behaviour and progress in that school; and
- (b) have access on request to annual reports respecting the general effectiveness of education programs in that school and in the school district.

(2) A parent of a student attending school may request that a teacher or the director consult with him or her with respect to the student's education program and that teacher or director shall comply with that request unless the request is unreasonable in terms of frequency or other circumstances.

[21] Under section 2(u) of the *Schools Act, 1997*, "student record" means "a record of information in written or electronic form pertaining to a student."

[22] However, NLESD's student records policy (PROG-310) provides a broader definition of "student record":

2. A student record shall consist of a cumulative file and, where necessary, a confidential file. Information may be maintained in paper/hard copy or electronic format, according to direction from the District or the Minister of Education and Early Childhood Development.

- a) A cumulative file must be opened, following registration, on a timely basis. It must contain specific information for each year of the student's schooling that directly refers to educational programming, services and educational progress.
- b) A confidential file must be opened immediately when information that is highly sensitive, as outlined in the administrative procedures/regulations for this policy, is acquired. The confidential file should be kept separate from the cumulative file.

[23] The NLESD's PROG-310 policy provides the type of information which collectively make up the cumulative file:

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.*

[24] Section 5 of PROG-310 policy states that “all access to information is provided in the best interests of the child in accordance with relevant legislation.” Particularly, section 5.2 of NLESD’s PROG-310 policy provides specific guidelines where consent for access is required:

5.2 The Schools Act, 1997, provides for the right of access to a student record for parents/guardians up to the age of 19. The following consent provisions apply for students and parents/guardians:

- a) Parent/guardian of student under 19 years of age, no consent required if in the care of that parent.*
- b) Student under 19 years of age who has demonstrated the intent to live independently to the satisfaction of the school administrator and the District, no consent required.*
- c) Parent/guardian of student over 19 years of age, consent of student required.*
- d) Parents/guardians who do not live together will normally be provided access to student records in accordance with an agreement or court order which deals with custody and access. Where parents/guardians do not live together and there is no agreement or court order in place, they will have equitable access to information from a student record until such time as access is determined via agreement or court order.*

[25] As the Complainant has stated that no custodial agreement or order was ever in place between himself and the mother of the student, as the father by birth of the student, he is entitled to equitable access to the records.

[26] “Equitable access” does not mean an unalienable right to the information, but rather that each parent has fair and reasonable access to the information. The NLESD determined that under section 20 of the *School’s Act, 1997*, the Complainant was entitled to information about the student’s attendance, behaviour and progress at the school, and therefore the school provided copies of the student’s report cards. The NLESD determined that there is no obligation under the *School’s Act, 1997* to provide a parent, custodial or non-custodial, other information unrelated to educational information within the student record.

[27] Previous findings from this Office have concluded that section 12(2) of the *School's Act, 1997* is not a mandatory provision concerning disclosure. In Report A-2018-010 the Commissioner stated:

[10] ...[I]t 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.

[28] The NLESD further considered that the student is a mature child who has almost reached the age of majority, and has expressly asked for the information not to be released. The NLESD therefore determined it would not be in the best interest of the child nor equitable to provide access to personal information to the Complainant.

ATIPPA, 2015

[29] The NLESD made no arguments regarding how the information request should be treated under the *ATIPPA, 2015*, as it claimed the *Act* did not cover student records. However, this Office will consider whether the information was appropriately withheld from the Complainant under *ATIPPA, 2015*.

[30] The student's address is the personal information of the student as defined in section 2(u) of the *ATIPPA, 2015*. They requested that it not be disclosed to the Complainant. The reason for transferring schools also meets the definition of personal information as it is “recorded information about an identifiable individual.”

[31] Section 40 of the *ATIPPA, 2015* states that “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.” Bearing in mind the particular information requested and the context, I find that both the address and the reason for transferring schools should be withheld from disclosure to the Complainant in accordance with section 40 on the basis that it would be an unreasonable invasion of privacy.

Whether section 12 of the *Schools Act, 1997* takes precedence over the *ATIPPA, 2015*

[32] In Report A-2018-010, my predecessor considered the interaction of the *Schools Act, 1997* and the *ATIPPA, 2015* concerning the matter of personal information contained within student records:

[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.

[33] Report A-2018-010 states that the ambiguity of the word “review” in the *Schools Act, 1997* – as opposed to the term “access” – precludes any conflict with the *ATIPPA, 2015*, and therefore a determination of which piece of legislation takes precedence was unnecessary at the time:

[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.

[34] For the same reasons noted in Report A-2018-010, I see no basis upon which to conclude that a conflict exists between the *ATIPPA, 2015* and the *Schools Act, 1997* in these circumstances. Section 12 of the *Schools Act, 1997* establishes a process, at the discretion of the District, for a parent or student to review the student record in person with NLESD staff, and the NLESD has concluded that the Complainant has already been furnished with the maximum amount of information appropriate to provide him with under that statute. The *ATIPPA, 2015* establishes a right of access which includes a right to obtain a copy of a record. That right is abrogated only if an exception applies, and in this case section 40 is a mandatory exception to the right of access which I have concluded applies to the information withheld

from the Complainant. As a result, even if I were to determine that a conflict exists, the outcome would be the same for the Complainant.

Whether the Complainant filed an access request with the District in accordance with the ATIPPA, 2015

[35] Under Section 11 of the *ATIPPA, 2015*, a request may be made as follows:

11. (1) A person may access a record or seek a correction of personal information by making a request to the public body that the person believes has custody or control of the record or personal information.

(2) A request shall

(a) be in the form set by the minister responsible for this Act;

(b) provide sufficient details about the information requested so that an employee familiar with the records of the public body can identify and locate the record containing the information with reasonable efforts; and

(c) indicate how and in what form the applicant would prefer to access the record.

[36] As described above, in the Complainant's email to the NLESD ATIPP Coordinator, he stated "ATIPP" as the subject and included all the information that he had requested from the school, and it is clear that he intended as much. Had the Complainant used the ATIPP form prescribed by the Minister, I suspect the District's response would have been the same, based on its position that the *Schools Act, 1997* is paramount. In my view the NLESD's position is incorrect.

[37] When the NLESD received a written request from the Complainant which clearly stated the information he was seeking, the NLESD's duty to assist under the *ATIPPA, 2015* was triggered. The duty to assist is set out in section 13:

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.

- [38] The duty to assist involves assisting an applicant and responding in an open, accurate and complete manner. If there was any doubt on the part of the NLESD whether the Complainant intended his request to be a request under the *ATIPPA, 2015*, this should have been clarified with him at the outset through open communication.
- [39] Based on the foregoing considerations, I find that that Complainant filed an access request with the NLESD in accordance with the *ATIPPA, 2015*, and that the NLESD failed in its duty to assist.
- [40] Section 15 of the *ATIPPA, 2015* requires the head of a public body to provide an advisory response to an Applicant within 10 business days of receiving a request. Within that response, an Applicant is required to “be informed of a circumstance that may result in the request being refused in full or part.”
- [41] Further, under section 16 at the *ATIPPA, 2015*, the head of the public body is required to provide a final response to the request not more than 20 business days after receiving it. If no response is provided within the legislated time period, the request is considered to have been refused.
- [42] The District did not provide a direct response to the Complainant subsequent to the initial request for assistance, instead notifying that they would check into the matter and get back to him. If the District did not believe the request was an access request, it ought to have, at the very least, provided an explanation regarding its interpretation of the interaction between the *Schools Act, 1997* and the *ATIPPA, 2015* and discuss the complainant’s options.
- [43] However, as I have determined that the request was, in fact, an access request, I find the NLESD ought to have formally responded to the Complainant’s request with an advisory and final response.
- [44] As the Complainant did receive only a portion of his request, and those records came from the school, NLESD did not provide a direct response to the Complainant since November 23, 2018, I find that the NLESD did not respond appropriately to the access request.

V CONCLUSIONS

[45] I find that the Complainant made an access to information request when he contacted the NLESD for assistance in accessing the student's records. When the NLESD failed to provide a direct response to the Complainant's request, it failed to appropriately respond to the request under sections 15 and 16 of the *ATIPPA, 2015*.

[46] However, I conclude that the NLESD appropriately withheld the personal information of the student from the Complainant under the *ATIPPA, 2015*.

VI RECOMMENDATIONS

[47] 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.

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

[49] Dated at St. John's, in the Province of Newfoundland and Labrador, this 26 day of March 2019.

Victoria Woodworth-Lynas
Information and Privacy Commissioner
Newfoundland and Labrador (A)