



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

---

NEWFOUNDLAND AND LABRADOR

**Report A-2024-003**

**January 18, 2024**

**Memorial University**

**Summary:**

The Complainant made an access request to Memorial University for correspondence to or from the Student Code of Conduct Coordinator about proposed changes to the University's Student Code of Conduct. Memorial's final response contained (among other records) a report commissioned by Memorial containing recommendations for changes to the Student Code of Conduct. Much of the report had been redacted pursuant to section 29 (policy advice). After a review of the redactions, this Office concurred with Memorial that the information was policy advice and could be withheld.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 9, and 29.

## BACKGROUND

- [1] The Complainant made an access to information request to Memorial University for the following:

*All emails sent/received by Student Code of Conduct Co-ordinator [name] re proposed changes to the Student Code of Conduct, the proposed Student Code of Rights and Responsibilities and the Continuous Improvement Committee from January 1st, 2020 to present.*

- [2] Memorial's response consisted of 2,510 pages of records. Included in the responsive records was a 54-page report prepared by an external consultant with recommendations for changes to the Student Code of Conduct. Much of this report was redacted by Memorial pursuant to section 29 (policy advice) and the Complainant sought a review of these redactions.
- [3] During informal resolution efforts, the University provided a part of the report summarizing comments from experts about the use of restorative justice in the resolution of student misconduct, to the Complainant.
- [4] As informal resolution of the remainder of the complaint was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## PUBLIC BODY'S POSITION

- [5] Memorial submits that the information which it has redacted from the report includes recommendations and analysis prepared for updating the University's Student Code of Conduct, which is still under review. The report contains advice and recommendations from an external consultant. At present, revisions to the Student Code of Conduct have not been finalized and internal consultations are still ongoing.

## COMPLAINANT'S POSITION

- [6] The Complainant notes that the report at issue was prepared by an external consultant, paid by Memorial to produce recommendations for revisions to the Student Code of Conduct.

As Memorial is primarily funded by taxpayers, the complainant believes that the public should know if the recommendations made in the report, which Memorial paid for, have actually been used in drafting the new Student Code of Conduct.

## ISSUES

- [7] At issue is whether Memorial has properly applied section 29 to withhold most of the consultant's report. If section 29 does apply, consideration must be given to whether there is a public interest in nonetheless disclosing the information.

## DECISION

- [8] Section 29 is an exception to access within *ATIPPA, 2015* which is intended to provide public servants with a "safe space" in which to hold discussions or debates around courses of action and to provide advice or recommendations about policy or procedural matters, without being concerned that their views and opinions will be made public. This protection extends to reports, memorandums, or other documents containing recommendations for a public body, including those commissioned by outside experts or consultants.
- [9] This exception to access for policy advice is a discretionary exception and is not a record-level exception. Rather, it applies to information and a public body must do a line-by-line review of any record which it believes contains policy advice and release information that is not policy advice, including factual information, to an applicant.
- [10] What Memorial has redacted from the consultant's report consists of recommendations for amendments to the University's Student Code of Conduct, identifying sections of the current Code, providing new recommended language, and explanations and rationales for the proposed changes. The report also contains recommendations about procedures for consultations, mediation, informal resolution of complaints, and formal resolution of complaints. On review of these redactions, we are satisfied that Memorial has appropriately applied section 29.

[11] Section 29 is subject to the public interest override at section 9. This means that there may be cases where the exception has been appropriately applied but the public interest in the information exceeds the purpose for the exception (in this case, the protection of policy advice and discussions about recommendations and options). The Complainant has submitted that there may be public interest in knowing whether Memorial has followed the advice it paid for from an outside consultant. The Complainant proposes that if Memorial spent public money to obtain recommendations about the Student Code of Conduct, and ignored those recommendations, then the public ought to know.

[12] It should be noted the protection afforded to discussions of policy advice applies equally to advice that has been followed as it does to advice that has not been followed. Public bodies benefit from receiving a diversity of opinions and advice, some of which it will use and some it will not, and there is nothing within section 29 that suggests advice or recommendations a public body has not used is not also protected. Public bodies routinely spend public funds to obtain policy advice, often in the form of salaries for its employees or, as in this case, sometimes by commissioning reports from outside consultants. Not all advice is necessarily followed, although even advice that is not followed may inform the decision-making process.

[13] In any case, we do not find there is a public interest in knowing whether Memorial has followed the recommendations in the consultant's report which would outweigh the importance of protecting the advice and recommendations in the first place. The University notes that its review of the Student Code of Conduct is ongoing, that changes have not been finalized, and consultations are ongoing.

## RECOMMENDATIONS

[14] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that Memorial University continue to withhold the information redacted from the responsive records.

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

[16] Dated at St. John's, in the Province of Newfoundland and Labrador, this 18<sup>th</sup> day of January, 2024.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador