



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-025

May 30, 2024

Memorial University

Summary:

The Complainant made a request under the **Access to Information and Protection of Privacy Act, 2015** to Memorial University for copies of protected disclosure annual reports. The University provided a final response to the request and disclosed responsive records, but withheld some information pursuant to section 29 (Policy advice or recommendations). Dissatisfied with the decision to withhold information, the Complainant filed a complaint with this Office. During the informal resolution process, the University released most of the previously redacted information; however, several passages remained withheld under section 29. After reviewing these passages, the Commissioner agreed that exceptions to access had been applied correctly and recommended that the University continue to withhold the remainder of the information.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 29 and 40.

Authorities Relied On: NL OIPC Reports [A-2021-033](#) and [A-2024-011](#).

BACKGROUND

- [1] The Complainant made an access to information request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to Memorial University for the following:

Copies of all Protected Disclosure Annual Reports prepared to date, including the report provided by the Protected Disclosure Coordinator to the Board of Regents on October 18, 2023.

- [2] In its final response to the request, the University provided 18 pages of responsive records, but withheld some information pursuant to section 29.

- [3] In the course of informal resolution efforts, the University ceased to rely on section 29 for most of its redactions and released additional information to the Complainant. However, the University continued to withhold three passages pursuant to section 29. As informal resolution of these remaining issues was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

ISSUES

- [4] At issue for this Report is the application of section 29 to three passages within the responsive records.

DECISION

- [5] The University's protected disclosure process allows for members of the University to report apparent wrongdoing. The request sought records related to this process. The information that remains redacted by the University is found in two copies of a table listing protected disclosures received by year, with further information such as file numbers, University process used to investigate the allegations, and the status of the investigation and in a report submitted to the Board of Regents. On both copies of the table, a single sentence is withheld from the description of the status of the investigation of an allegation received in 2017. In the case of the third passage, information has been withheld from the University's Protected Disclosure Annual Report for 2022 which was submitted to the Board of Regents.

- [6] Section 29 allows a public body to withhold information that would reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body. As this Office has noted in previous reports (see, for example, [Report A-2023-033](#)), the exception for policy advice is intended to provide public servants with a degree of confidentiality to discuss or debate courses of action and to provide advice or recommendations about policy decisions without necessarily exposing those options and advice to the public.
- [7] On review of the information redacted from the 2022 Protected Disclosure Annual Report, we are satisfied that the University has properly applied section 29. The information withheld consists of policy advice related to the protected disclosure process.
- [8] The information withheld from the table listing the number of complaints and the status of investigations is, however, different. We are not satisfied that this information qualifies as policy advice. However, it is possible that other exceptions to access might apply. When the University agreed to release most of the information redacted under section 29, it noted that the remaining information in the table related to an identifiable employee. While section 40 (Disclosure harmful to personal privacy) was not explicitly raised by the University, it would apply in this case.
- [9] This Office has previously commented on the issue of public bodies belatedly applying additional exceptions to access during the complaint process, most recently in [Report A-2024-011](#). A complaint received by this Office is a complaint about a public body's decision to refuse access in its final response to the access to information applicant. This is especially the case when the public body has applied a discretionary exception to access (such as section 29). In the case of a discretionary exception, an applicant is entitled to expect that a final response to their access request from a public body is the result of the public body's full consideration of all applicable exceptions to access.
- [10] One exception to this treatment of late-applied exceptions is when the exception that may apply is a mandatory exception to access. All public bodies, including this Office, are required to withhold certain information. In the present case, the information is personal information of an employee of the University that does not fall under any of the provisions at section 40(2) which would deem its disclosure to not be an unreasonable invasion of personal privacy. As

such, we find that the University ought to continue to withhold this information, albeit under section 40 rather than section 29.

RECOMMENDATIONS

- [11] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015), I recommend that Memorial University continue to withhold the information redacted from the responsive records.
- [12] 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.
- [13] Dated at St. John's, in the Province of Newfoundland and Labrador, this 30th day of May, 2024.



Jacqueline Lake Kavanagh
Information and Privacy Commissioner (Acting)
Newfoundland and Labrador