



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-030

June 27, 2024

Memorial University of Newfoundland

Summary:

The Complainant made an access to information request to Memorial University for records relating to the resumes and cover letters for several employment competitions with the University. The University provided the Complainant with responsive records but withheld the personal information contained in the records, including educational and employment history, citing section 40(1) of the **Access to Information and Protection of Privacy Act, 2015**. The University also disclosed a form used for evaluating candidates but withheld the actual evaluations pursuant to section 32(a) of the Act. The Complainant asserted that the qualifications of candidates and their evaluations should be disclosed. This Office determined that the University properly applied both sections 40(1) and 32(a), noting the Act's explicit classification of employment and educational history as personal information, the sensitivity of this information, and the need to provide confidentiality in the hiring process.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 2(u), 32(a), 40(1), 40(4), and 40(5).

Authorities Relied On:

[OIPC Report A-2023-017](#).

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:

Redacted resumes and cover letters confirming qualifications of screened in applicants for the following job competitions:

1. Custodial I – MUN02176;
2. Administrative Staff Specialist I (Human Resources) – MUN02177;
3. Campus Enforcement and Patrol Officer I – MUN02446;
4. Interviewer – MUN02525

[2] The University conducted a search for responsive records and provided the Complainant with 15 pages of records consisting of resumes and cover letters for three of the positions, as well as a matrix developed to assess the suitability of candidates. There were no responsive records for the Administrative Support Specialist position as the competition had been canceled and no one was hired. For the other three competitions, the University withheld significant portions of the records, citing sections 40(1) and 32(a) of ATIPPA, 2015.

[3] The Complainant disagreed with the amount of information redacted by the University and filed a complaint with this Office.

[4] As informal resolution was unsuccessful, the Complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015.

PUBLIC BODY'S POSITION

[5] It is the position of the University that the information withheld is clearly personal information as defined in ATIPPA, 2015 and that it released as much information as it could without contravening the Act. Further, it notes that the assessment matrix developed as part of the hiring process is part of the evaluative process for employment and the University can withhold such information.

COMPLAINANT'S POSITION

[6] The Complainant does not agree that information about an individual's work and education history and how that is assessed by the University should be withheld. Withholding information regarding a person's name, address, and other identifying information should suffice and that it is necessary to release employment and educational history to understand whether the appropriate person was hired.

DECISION

[7] The provisions of ATIPPA, 2015 relevant to this matter are as follows:

2. In this act

(u) "personal information" means recorded information about an identifiable individual, including

(vii). information about the individual's educational, financial, criminal, or employment status or history.

...

32.(a) The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material, provided explicitly or implicitly in confidence, and compiled for the purpose of

(a) determining suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body;

...

40.(1) 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.

...

40.(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

...

(c) the personal information relates to employment or educational history.

...

- 40.(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether
- (a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;
 - (b) the disclosure is likely to promote public health and safety or the protection of the environment;
 - (c) the personal information is relevant to a fair determination of the applicant's right;
 - (d) the disclosure will assist in researching or validating the claims, disputes, or grievances of aboriginal people;
 - (e) the third party will be exposed unfairly to financial or other harm;
 - (f) the personal information has been supplied in confidence;
 - (g) the personal information is likely to be inaccurate or unreliable;
 - (h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;
 - (i) the personal information was originally provided to the applicant; and
 - (j) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

Personal Information

- [8] Unlike many provisions of ATIPPA, 2015 where the withholding of information is at the discretion of the public body, section 40(1) of the Act requires that the personal information of third parties be withheld. The definition of personal information within the Act is broad and is not exhaustive.
- [9] However, the Act is clear that not all personal information is to be treated the same and must be placed in proper context. For example, while a person's financial status is personal information, section 40(2)(f) states that it is not an unreasonable invasion of a third party's privacy to disclose their remuneration as an employee of a public body.
- [10] In this case, the Complainant is seeking information contained in resumes and cover letters submitted by third parties as part of the job competition process for various positions

with the University. These records contain detailed information on the educational and employment history of the applicants. According to section 2(u)(vii) of ATIPPA, 2015, a person's educational and employment status and history is personal information. Moreover, section 40(4)(c) explicitly provides that the disclosure of a person's educational and employment history is presumed to be an unreasonable invasion of a third person's personal privacy. Therefore, the Act is clear that there is a presumption against disclosing the information sought by the Complainant.

[11] When information is withheld pursuant to sections 40(1) and 40(4), relevant circumstances, including those set forth in section 40(5) of the Act, must be considered to make a final determination as to whether the personal information should be withheld. In this case, there are no circumstances that warrant the disclosure of the third party personal information. The disclosure of this information would not assist in a fair determination of the Complainant's rights as the Complainant is not advancing a rights-based argument. Moreover, the applicants who supplied the resumes and cover letters did so under the expectation that their information would be held in confidence. There is also a risk that the disclosure of personal information may unfairly damage the reputation of the third party, as resumes do inform personal reputations.

[12] It is our view, therefore, that the University has properly applied section 40(1) to the responsive records.

Evaluative Material

[13] Section 32(a) of ATIPPA, 2015 expands upon the personal privacy protections provided in section 40(1) by including evaluative and opinion material provided in confidence to a public body for the purposes of assessing a person's suitability for employment. This not only includes resumes, cover letters, and job applications, but also notes and evaluative forms used to assess employment candidates. Such information, if disclosed, could have detrimental effects on a job applicant and deter qualified individuals from applying for work with public bodies. As this Office noted in [Report A-2023-017](#):

There are sound policy reasons for withholding this information. Evaluations are a mixture of the objective and subjective and explicitly involve someone forming

an opinion on someone else. The person being evaluated is in a relatively defenseless position, as that person has very little ability to change an evaluation once it is done. Evaluations are necessary, but they are imperfect and can be wrong.

...

As for the person doing the evaluating, if evaluative information was to be released, the evaluator, cognizant of the impact of their judgments may not be as honest or forthright in their evaluation. The evaluator may also be publicly criticized for the judgments they arrive at.

[14] Section 32(a) of ATIPPA, 2015 ensures that the application and assessment process for employment with a public body remains a safe space for both applicants and evaluators. A person applying for employment with a Public Body should not have to live with the concern that their application and assessment for the position would be publicly disclosed.

[15] In its response to the Complainant, the University provided a chart used to catalogue the relevant experiences of the applicants for the job competitions. The University disclosed the headings for each column in the chart but withheld the names of the individuals and the assessment of whether they met the specified skills and experience. Withholding this information is in keeping with the purpose of section 32(a) of ATIPPA, 2015 and this Office agrees with the University's use of this section.

RECOMMENDATIONS

[16] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that Memorial University maintain its position on this matter.

[17] As set out in in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 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.

[18] Dated at St. John's, in the Province of Newfoundland and Labrador, this 27th day of June 2024.



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