



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-059

December 18, 2024

Labour Relations Board

Summary:

The Complainant made an access to information request to the Labour Relations Board seeking records about the Board posting two of its decisions in the public domain. The Board provided the Complainant with two emails to the Canadian Legal Information Institute attaching its decisions for publication on that website and advised the Complainant the **Access to Information and Protection of Privacy Act, 2015** did not apply to further records as they fell under section 5(1)(b) as notes, communications, or draft decisions of a person acting in a quasi-judicial capacity. Upon investigation, it was determined that the Board had corresponded with the Office of the Chief Information Officer about posting decisions on its website, but those emails had been deleted. The Commissioner concluded that the Board had properly applied section 5(1)(b), that it had conducted a reasonable search, and that it had generally met its duty to assist the Complainant.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 5(1)(b), 13, and 97.

[Labour Relations Act](#), RSNL 1990, c L-1, sections 12 and 19.

Authorities Relied On: NL OIPC Report [A-2009-011](#).

BACKGROUND

- [1] The Complainant made an access to information request under the **Access to Information and Protection of Privacy Act, 2015** (the “**Act**”) to the Labour Relations Board for:

All records pertaining to the posting the Board's decisions in [two named Labour Relations Board decisions] in the public domain, including on the CanLII website. Period covered: January 4, 2024 to July 4, 2024. Format requested: the format in which a record was made, sent or received or in a format that does not materially change the electronic information that was originally created, sent or received.

- [2] In its final response, the Board provided the Complainant with two emails from the Board to the Canadian Legal Information Institute (“**CanLII**”), providing copies of the two decisions (along with several others) to be posted on the Institute’s website. The Board advised the Complainant that further responsive records were withheld pursuant to section 5(1)(b), as they constituted a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity.

- [3] The Labour Relations Board is an independent tribunal empowered to adjudicate labour relations disputes under the **Labour Relations Act**. The Board’s decisions are in the form of an order and, if requested by the parties, written reasons for decisions. Pursuant to section 12 of the **Labour Relations Act**, such decisions are filed with the secretary of the Board and sent to the minister responsible for labour and to the parties. The Board also posts its decisions in the public domain through its website and through CanLII. Per section 19 of the **Labour Relations Act**, the decisions of the Board are not subject to judicial review. Rather, parties may apply to the Board for reconsideration of the Board’s decisions.

- [4] Dissatisfied with the Board’s response, and in particular with what the Complainant believed to be a failure by the Board to meet its section 13 duty to assist, the Complainant filed a complaint with this Office.

- [5] The Board relied on section 97(1)(a) of the Act, which restricts the authority of the Commissioner to require a record to be produced for review, and did not provide a copy of the responsive record to our Office. As such this Office must rely only on the evidence provided by

the Board to determine whether it has discharged its burden of proof in deciding not to disclose the record to the Complainant.

- [6] Informal resolution was unsuccessful and the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY'S POSITION

- [7] The Board submits that while its decisions and reasons are published in the public domain, and some further records about its work may be accessible through the Act, by virtue of section 5(1)(b), the Act does not apply to the notes, communications or draft decisions of the Chairperson or Vice-Chairperson of the Board as they are persons acting in a quasi-judicial capacity. The Board further submits that section 5(1)(b) continues to apply to the Board's notes, communications or draft decisions even after a final decision has been rendered.

- [8] The Board submits that the Complainant has had several matters before the Board, including matters that were ongoing and related to the two decisions referenced in their access request. The question of whether the name of a party would be withheld by the Board was at issue and was addressed in both decisions and an application to reconsider that decision was still before the Board at the time of the access request. Records related to that application were considered responsive to the request, as they concerned the question of disclosing the name of a party to the public, but were withheld under section 5(1)(b) as the application for reconsideration was still being considered by the Board.

- [9] As to the search it conducted for records responsive to this request, the Board submits that the records of both employees and board members were searched using appropriate keywords drawn from the Complainant's request. The Board submits that the only records located that were not notes, communications or draft decisions subject to section 5(1)(b) were the two emails to CanLII. The Board notes that its decisions are routinely sent to CanLII for publication and also published on its website. Publishing decisions on its website involves sending decisions to the Office of the Chief Information Officer ("OCIO") to update the Board's website. While emails conveying those decisions to the OCIO would have been responsive

records, they were deleted as transitory at some point prior to the Complainant making their access request to the Board.

COMPLAINANT'S POSITION

[10] The Complainant submits that following their receipt of the Board's final response, the Complainant had follow-up questions for the Board about its response and that by failing to satisfactorily respond to those requests for clarification, the Board has not met its duty to assist the Complainant.

[11] The Complainant further submits that once a decision or an order is made by the Board, the Board is *functus officio* and the exemption for notes, communications or draft decisions provided at section 5(1)(b) no longer applies. As such, the Complainant submits that all records withheld pursuant to section 5(1)(b) ought to be disclosed.

ISSUES

[12] The two issues for this Report are whether the Board has properly applied section 5(1)(b) and whether it has met its duty to assist the Complainant pursuant to section 13, including conducting a reasonable search for records.

DECISION

Decision to Withhold Records

[13] Beyond the two emails to CanLII, the Board withheld further records under section 5(1)(b) as "a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity." These records were related to matters still under consideration by the Board, being applications to reconsider the two decisions referenced in the access request. As noted above, the Board is an independent tribunal that hears and adjudicates labour relations issues and its decisions are not subject to judicial review. Based on the mandate and authority

of the Board, we therefore conclude that Board members are persons acting in a quasi-judicial capacity.

[14] Section 97(3) of the Act provides that this Office may compel production of any record the Commissioner considers relevant to an investigation. However, this power to access records is restricted by section 97(1), and this Office does not have the jurisdiction to require production of records for which section 5(1)(b) has been claimed to apply.

[15] In order to meet its burden of proof, the Board has advised this Office that the publication of the decisions referenced in the access request was an issue considered by the Board as one of the parties had made an application to have their name redacted from the Board's decision. That application was not granted, but a later application for reconsideration was brought by the party during the period of the access request (January 4, 2024 to July 4, 2024). As such, records related to the Board's consideration of the initial application, and the application for reconsideration, were considered responsive to the request for information about posting the Board's decisions publicly.

[16] Based on the nature of the Board and its mandate, the records which were disclosed to the Complainant, the wording of the request, and the procedural history of the two decisions referenced in the access request, we are satisfied that section 5(1)(b) applies to the other records.

Duty to Assist

[17] Section 13 of the Act places on public bodies a duty to assist access to information applicants:

Duty to assist applicant

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.

(2).The applicant and the head of the public body shall communicate with one another under this Part through the coordinator.

[18] The duty to assist has been interpreted by this Office to consist of three elements: to assist an applicant in the early stages of making a request; to conduct a reasonable search for records; and third, to respond to the applicant in an open, accurate and complete manner (see, for example, [Report A-2009-011](#)).

[19] With respect to the search conducted by the Board, our Office has commented previously on the obligation on a public body to conduct a reasonable search. The standard is reasonableness, rather than perfection. What constitutes a reasonable search may vary depending on the circumstances of the access request, but the general expectation is that it should be conducted by knowledgeable staff expending a reasonable effort to locate responsive records in locations where they are likely to be found.

[20] In assessing the reasonableness of a search, it is sometimes necessary to assess the wording and scope of the access request and what records are likely to be covered by the request. The Complainant requested records about “posting the Board’s decisions . . . in the public domain, including on the CanIII website.” Both parties have noted that the **Labour Relations Act** allows a party to request written reasons from the Board. The Board advises that once decisions are drafted, they are provided to the secretary of the Board who arranges for them to be added to the Board’s website as well as to CanLII. Correspondence with CanLII was located and provided to the Complainant, but the Board did not locate its correspondence with OCIO. The Board has acknowledged that its correspondence to OCIO about the decisions was deleted prior to the access request.

[21] After the Board provided its final response to the Complainant, the Complainant had follow-up questions for the Board about the volume of records located to which section 5(1)(b) was being applied as well as how decisions about posting decisions on the website and CanLII are made. The Board attempted to respond to these questions in a brief exchange of emails between the Board and the Complainant. It appears the Board may have misunderstood the Complainant’s questions at some points but did attempt twice to offer a response to their questions. The Board advised that the actions taken by the secretary to the Board to disseminate the decisions of the Board derived from section 12 of the **Labour Relations Act**. With respect to a description of the records withheld under section 5(1)(b), the Board took the

position that it was not required to disclose details about records that were outside of the scope of the Act. The Complainant termed the Board's responses a "refusal to clarify the matter" and the exchange between the Complainant and the Board ended. In the meantime, the Complainant had already filed a complaint with this Office.

[22] Having reviewed the correspondence between the Board and the Complainant, we are satisfied that the Board has met its duty to assist. Section 13 states 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". The Board responded promptly and appears to have made a good faith effort to understand the Complainant's questions. While the Board may not have understood exactly what the Complainant was asking at some points, it is not apparent the Complainant has been prejudiced by any misunderstanding.

RECOMMENDATIONS

[23] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** (the "Act"), I recommend that the Labour Relations Board maintain its position on this matter.

[24] As set out in section 49(1)(b) of the Act, the head of the Labour Relations Board 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.

[25] Dated at St. John's, in the Province of Newfoundland and Labrador, this 18TH day of December 2024.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador