



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-019

March 26, 2025

Memorial University

Summary:

The Complainant made an access request to Memorial University for a copy of the letter of reprimand issued to the Chair of the Board of Regents. Memorial withheld the entire record citing several provisions of section 40 of the **Access to Information and Protection of Privacy Act, 2015** (disclosure harmful to personal privacy). On review the Commissioner concluded that section 40 applied to some of the information in the record and recommended that Memorial continue to withhold part of the record and disclose the remainder.

Statutes Cited:

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

[Memorial University Act](#), RSNL 1990 c. M-7.

Authorities Relied On: NL OIPC Report [A-2023-021](#).

[Kirby v. Chaulk](#), 2021 NLSC 86.

BACKGROUND

- [1] The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) to Memorial University for a copy of the letter of reprimand issued by the Board of Regents to the former Chair of the Board of Regents, following an incident involving the Chair and students campaigning about MUN’s role in the conflict in Palestine.
- [2] Memorial withheld the entire record citing section 40(1) of the Act (disclosure harmful to personal privacy). The Complainant filed a complaint with our Office.
- [3] Memorial states that the redaction was appropriate. As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

DECISION

- [4] The sole issue to be discussed in this Report is whether the redacting of any or all of the information in the responsive record under section 40 of the Act is appropriate.
- [5] First, section 40 is not a record-level exception, and therefore information should only be redacted by conducting a line-by-line review. Memorial states that a line-by-line review of the records was conducted, and it was decided that all of the information qualified and warranted protection.

Section 40(4)(c)

- [6] Memorial states that it applied section 40(4)(c) which provides that disclosure of a person’s “employment history” is presumed to be an unreasonable invasion of privacy. The individual was not, however, an employee of Memorial, but was an appointed senior officer.

[7] Memorial argues that the position had decision-making power and was therefore the “equivalent” to an employee, and states that:

. . . other Canadian jurisdictions, (including Alberta, BC and PEI), include “volunteer” within the definition of employee, and recognize it is the performance of a service related to a public body that is of integral consideration (and not a formal contract) that determines employment status.

[8] This Office does not interpret the access provisions of the Act in that way. Our legislation does not explicitly include volunteers in the definition of “employee” in section 2(i). Further, the legislature in section 40(2)(f) has also created a much broader provision which applies to “members and officers” of a public body in addition to “employees”. This indicates that the definition of employee in section 2(i) should be interpreted narrowly, to exclude members and officers of public bodies. If the definition of employee already included members and officers, the separate reference to those other categories in section 40(2)(f) would be unnecessary.

[9] Similar issues arose in the recent Supreme Court case of [Kirby v. Chaulk](#). The court, in reviewing the provisions of the Act and their application to the facts in that case, noted that the Act in several places distinguishes between “employees,” “officers,” and “elected officials,” and determined that the definition of “employee” could not be expanded so as to cover elected members of the House of Assembly.

[10] There is nothing in the **Memorial University Act** to suggest that members of the Board of Regents are in a contractual relationship with the University, either a contract of service (the “master and servant” relationship underpinning the common law definition) or retained under a contract to perform services for the public body as included in the Act section 2(i).

[11] In the present case all members of the Board of Regents including the Chair are appointed by the Lieutenant-Governor in Council under the **Memorial University Act** to serve for three-year terms. Section 33 of the University’s governing legislation gives the Board the powers of full management and control of property, revenue, business, and affairs of the University. Section 34 provides a lengthy detailing of all of its powers, including appointments.

[12] The Board of Regents therefore is essentially the equivalent of a corporate board of directors. In their capacity as Board members, those individuals are effectively the employer, not employees. Therefore section 40(4)(c) – employment history – can have no application.

[13] In the present case, it would appear that the members of the Board of Regents are “officers” of the University. The record at issue, however, does not appear to be about the “position, functions or remuneration” of the individual as an officer, so section 40(2)(f) will not apply to require disclosure of the information.

Section 40(4)(f)

[14] Memorial claims that section 40(4)(f) (personal recommendations or evaluations, character references or personnel evaluations) applies to some or all of the information. Memorial argues that the term “evaluation” is not restricted to evaluations of applicants for positions. We agree that this exception would apply since, unlike section 40(4)(c), its application is not restricted to information about an employee. Some of the information in the letter of reprimand would be considered an evaluation.

[15] The exceptions claimed by Memorial fall under section 40(4), which creates a presumption that disclosures of such information are an unreasonable invasion of personal privacy. Section 40(5) however, provides that a presumption may be either rebutted or upheld, depending on a consideration of all the relevant circumstances.

Section 40(5)

[16] To argue that the presumption should be upheld, Memorial has invoked sections (40)(5)(e) and (h), which refer to possible unfair harm to the individual or to reputation. The question is whether the disclosure of information in the letter of reprimand could be expected to unfairly expose the individual to harm or unfairly damage their reputation.

[17] In the past we have not been inclined to consider legal or disciplinary procedures or penalties as “unfair” (see, for example, Report [A-2023-021](#).) To the extent that information in the record is about a disciplinary action taken by the Board under its statutory authority, it

cannot be considered “unfair.” There are, however, other portions of the letter that it may constitute unfair harm to reputation to disclose.

[18] It is a fact that some elements of the letter of reprimand are already public. The action that was taken by the Board of Regents was fairly notorious, and was in fact announced by the Board of Regents and published in the [MUN Gazette](#). This story was further taken up by the [CBC](#) and other media.

[19] Memorial accepts that many of the pertinent points regarding this incident were detailed in the MUN Gazette article or other media. Memorial argues, however, that some remaining information in the letter of reprimand contains details of a confidential investigative process, and an evaluation of the individual’s actions, which it claims would constitute an unreasonable invasion of their personal privacy if this information was released.

[20] We have already concluded, above, that some of the information in the letter would be an evaluation. On a review of the record, it also appears that some of the details about the investigative process would be the individual’s personal information and would be considered confidential.

[21] Section 40(5)(a) (the desirability of subjecting the activities of the public body to public scrutiny) would appear to be applicable to this assessment. In particular, in the present case we must consider the fact that the role of Chair of the Board of Regents is a key leadership role in one of the province’s largest public bodies. How that person discharges or fails to discharge their responsibilities in compliance with policies and regulations is a significant consideration. Memorial, however, has already given a public account of the Board’s action to the news media, and we conclude that no additional transparency, accountability, or credibility would be gained by providing the entire letter.

[22] Our conclusion is that overall, the application of section 40(5) would favour disclosure of some but not all the information in the letter.

[23] Finally, we are concerned about Memorial's references in its submissions to the motives of the Complainant. This Office reiterates that the reason for an access request, the motives of an applicant, or consideration of what an applicant may do with the information received usually have no part in the processing of an access request. Indeed, that is one reason why section 12 requires all requests to be handled anonymously; and the head of the public body should not normally know the identity of the applicant and the identity of the applicant should have no bearing on decisions about whether to disclose information.

[24] For the above reasons, our conclusion is that some of the redactions to the record are appropriate, and that Memorial should continue to withhold that information. The remainder of the record should be disclosed.

RECOMMENDATIONS

[25] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** I recommend that Memorial University disclose the responsive record to the Complainant, continuing to withhold some of the information under section 40 as highlighted in a copy of the responsive record accompanying this Report.

[26] As set out 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.

[27] Dated at St. John's, in the Province of Newfoundland and Labrador, this 26th day of March, 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador