

EXC/21/1/39

January 13, 2021

The Honourable David B. Orsborn
Committee Chair
Access to Information and Protection of
Privacy Act Statutory Review 2020
3rd Floor, Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8

Dear Justice Orsborn:

The Newfoundland and Labrador English School District (NLESD) has shared with the Department of Education (the Department) correspondence relating to comments provided to you from the Office of the Information and Privacy Commissioner (OIPC). These comments are regarding sections of the **Schools Act, 1997** being included in Schedule A of the **Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)**. The Department is in agreement with the response that NLESD sent to you on January 7, 2021 regarding this matter. We reiterate that the Department does not agree with the recommendations of the OIPC that these provisions of the **Schools Act, 1997** should be removed from **ATIPPA, 2015**. However, as this department has been mandated the responsibility for the **Schools Act, 1997**, it is important that the Department has an opportunity to provide feedback on these issues.

OIPC Recommendation 14.1 – Remove section 62(2) from Schedule A as it is redundant to section 28(1)(c)

The Department strongly agrees with NLESD that section 62(2) of the **Schools Act, 1997** not be removed from Schedule A of **ATIPPA, 2015**. While section 28(2) of **ATIPPA, 2015** is discretionary, section 62(2) of the **Schools Act, 1997** is mandatory. This provides the necessary protection to the types of highly sensitive information, often including personal information regarding students and staff, that are discussed in closed meetings of the Board of Trustees (the Board) of NLESD. The vast majority of Board meetings are open to the public and closed meetings only occur for discussing issues of a sensitive nature that are set out in the Board's by-laws. These by-laws have strict protocols regarding potential changes or amendments taking place, including the requirement of Ministerial approval of such a change.

Another important point outlined by NLESD is the fact that section 28(1) of **ATIPPA, 2015** does not apply once the information is at least 15 years old. This highly sensitive information, that is currently protected under section 62(2) of the **Schools Act, 1997**, should not have a legislated end date for its protection from disclosure.

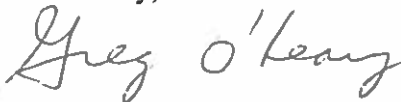
OIPC Recommendation 14.2 – Remove the reference to section 12 of the Schools Act, 1997 from Schedule A of ATIPPA, 2015

As noted by NLESD, the **Schools Act, 1997** is quite dated and the Department is currently undertaking a comprehensive review with the aim of modernizing the legislation by drafting a new Act and ensuring it is in line with the current practices. As such, the Department feels that the current section 12 of the **Schools Act, 1997** should not be removed from Schedule A of **ATIPPA, 2015** at this time. As the legislative review is ongoing, we do not yet know what the recommended changes will be for section 12. It would be premature to make a decision to remove section 12 from Schedule A at this time.

Further, it has always been the intention of the Department to discuss this issue, as well as other sections of the legislation relating to access and privacy, with OIPC as part of the legislative review process.

I thank you for the opportunity to provide comments to consider in your ongoing review of **ATIPPA, 2015**.

Sincerely,



HONOURABLE TOM OSBORNE, MHA
Minister of Education
District of Waterford Valley