



Office of the Child and Youth Advocate

Newfoundland and Labrador

September 28th, 2026

ATIPPA Statutory Review Committee 2025
2nd Floor, Beothuck Building
20 Crosbie Place
St. John's, NL
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Attention: Keri-Lynn Power – Committee Chair

Dear Commissioner Power:

Re: Submission of the Office of the Child and Youth Advocate

Thank you for your letter of July 17, 2026, inviting us to provide a written submission to the Statutory Review Committee 2025. The Office of the Child and Youth Advocate ("OCYA") participated in the 2020 Statutory Review and welcomes the opportunity to assist and provide input to the Committee for consideration. While the volume of access requests received in our office is not large, and in fact we only received two in the last fiscal year, our office has concerns with the legislation as set out herein.

The Terms of Reference for this review include a review of the recommendations of the 2020 Statutory Review issued by Commissioner, the Honourable David B. Orsborn, for applicability or revision. By way of context, it is important to note that the 2020 Statutory Review was submitted to government on June 8, 2021, however amendments relevant to the operation of the Child and Youth Advocate have not been implemented. Therefore, many of the issues addressed in our 2020 submission remain (copy of 2020 submission enclosed). In addition, since the last statutory review two reports have been issued by the OIPC involving the Office of the Child and Youth Advocate, Report A2022-026 and A-2023-028 (copies enclosed). These reports highlight ongoing concerns about protecting the personal information of children, which is often very sensitive, that comes into the possession of the OCYA in performing its statutory mandate.

In our 2020 submission our office identified a concern with respect to the possible interplay between s.33 of the ATIPPA (“Information from a Workplace Investigation”) and s.41 (c) (“Disclosure of House of Assembly Service and Statutory Office Records”). This concern was specifically addressed in the 2020 Statutory Review Report at pages 281 and 282:

Similar sentiments were echoed by the Children and Youth Advocate, at pages 6–7:

While it would be a rare occasion where an applicant would seek access to the investigatory records connected with the Office of the Child and Youth Advocate, there are concerns with the operation of s.33 of the ATIPPA and the impact it could possibly have upon records in the custody or control of the Advocate. Section 33 of the ATIPPA is entitled “Information from a Workplace Investigation” and creates limited access rights to a party involved in such an investigation. It is not unusual for the Advocate in performing its statutory role to obtain information about the conduct of health care professionals, social workers engaged in child protection and related services, youth corrections staff, and other public servants and third parties. Depending on the circumstances it is possible that some of this information could be characterized as information relevant to a workplace investigation. In such circumstances the ATIPPA should be clear, that notwithstanding s.33 of the ATIPPA, no records connected with the investigatory functions of the Advocate should be disclosed to an applicant.

Additionally, it should be noted that not all investigations result in formal reports being prepared. There are any number of reasons why an investigation may not result in a published report. Section 41(c) should be strengthened to make it clear that irrespective of a report being prepared following an investigation, no access will be provided to the investigative file or the report.

After referencing similar concerns addressed by other statutory offices regarding the interplay between s.33 and s.41(c) Commissioner Orsborn concluded:

The valid concerns about the right of access granted by s. 33 overriding the exception in subsection 41(c) have been addressed elsewhere in this report. The amendment to s. 33 should alleviate the concern.

At pages 140-149 of the 2020 Report Commissioner Orsborn conducted a thorough review of s.33. At page 150 the following recommendations were made:

- *Extend the definition of “workplace investigation” to include others holding a position within a public body. [Appendix K, s. 33(1)(c)(i) and (iii)]*

- *Provide a mandatory exception to access for all relevant information created or gathered for the purpose of a workplace investigation, but allow discretionary disclosure of the final report of a workplace investigation to a complainant or respondent, or otherwise where in the public interest. [Appendix K, s. 33(2) and (3)] (Emphasis added)*
- *Require the head of a public body to disclose to an applicant a statement provided by the applicant for the purpose of a workplace investigation. [Appendix K, s. 33(4)]*
- *Remove the House of Assembly Act and House of Assembly Accountability, Integrity and Administration Act inquiries from s. 33. [Appendix, s. 33(1.1)]*
- *Allow the head of a public body to refuse access to information relating to workplace conduct provided in confidence, including opinions about another individual. [Appendix K, s. 33(5)]*

The OCYA is supportive of including a mandatory exception to access for all relevant information created or gathered for the purpose of a workplace investigation. By creating a mandatory exception to access, sensitive information that may come into the possession of the OCYA regarding the conduct of health care professionals, social workers, and child protection officials, would be protected and the possibility of disclosure of personal information of vulnerable children or youth would be reduced. At the same time, the OCYA would retain the ability pursuant to s.15 of the *Child and Youth Advocate Act* to conduct its own independent investigation into whether the treatment and rights of children and youth, are protected and respected.

As noted above, there have been two Commissioner Reports issued by the Information and Privacy Commissioner since the 2020 statutory review which have interpreted the OCYA's reliance on s.41(c).

In Report A-2022-026 an applicant requested information relating to themselves and their three minor children. The OCYA denied access pursuant to s.41(c). The applicant then made a complaint to the Commissioner taking the position that s.41 (c) did not apply, in part, because a Notice of Investigation could not form part of an investigation by the OCYA because it would have been issued prior to the start of an investigation. This was a creative attempt to circumvent s.41(c) and the Commissioner upheld the denial of access based upon that exception.

In Report A-2023-028 an applicant requested records relating to themselves and their minor children. The OCYA denied access pursuant to s.41(c). The applicant then made a complaint to the Commissioner taking the position that s.41(c) did not apply as they believed the matter not to be an investigation. This was another creative attempt to access sensitive records in the possession of the public body. The Commissioner agreed with the OCYA and concluded that s. 41(c) not only applies to records that are created over the course of a formal investigation but also records relating to that investigation. The Commissioner stated that “records created prior to the launch of an official investigation, or in the course of determining if an investigation is necessary, still relate to the Office’s investigatory function and therefore are required to be withheld.”

The above Commissioner Reports demonstrates similar concerns that the OCYA espoused during the 2000 Statutory Review. Individuals, often involved in family disputes and/or disputes related to child protection, continue to attempt to access records through the OCYA. These attempts have been unsuccessful, however given the sensitivity of the records involved in the possession of the OCYA stronger legislative protections should be enacted.

Therefore, the OCYA recommends that language be added to s.41(c) in the case of the Child and Youth Advocate, as follows:

The Speaker of the House of Assembly, the officer responsible for a statutory office, or the head of a public body shall refuse to disclose to an applicant information, in the case of the Child and Youth Advocate, as defined in the House of Assembly Accountability, Integrity and Administration Act, any records, whether or not an investigation has been commenced or occurred, related to or connected with the investigatory functions of that office.

The Terms of Reference also include whether clarification is required around the rights of a minor in assessing or protecting their personal information. The issue of a minor having access to their personal health information, and consent being required for a parent or guardian to have access to that minor’s personal health information has recently received public commentary. As you are likely aware, the government of Newfoundland and Labrador is currently reviewing the *Personal Health Information Act*, SNL2008, c. P-7.01 (“PHIA”) with written submissions due by September 30, 2026. We are enclosing a copy of our submission to that review with this correspondence.



The OCYA thanks you for considering these important issues related to the privacy rights of individual's and youths. If you require any further information or clarification, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Wilma MacInnis'.

Wilma MacInnis, MSW, RSW
Child and Youth Advocate
Newfoundland and Labrador

Enclosed

Office of the Child and Youth Advocate

**Submission to the
Department of Health and Community Services
regarding the review of the Public Health
Information Act (PHIA)**

September 2026



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Introduction

The Office of the Child and Youth Advocate (OCYA) welcomes the opportunity to provide feedback to the Department of Health and Community Services regarding their review of the **Public Health Information Act (PHIA)**.

The Office of the Child and Youth Advocate (OCYA) is legislatively mandated by the **Child and Youth Advocate Act** to protect and advance the rights of children and youth in Newfoundland and Labrador. The Child and Youth Advocate is an independent statutory officer of the Legislature and carries significant authorities in this role. This Office provides public oversight of government programs and services to children and youth and helps young people by independently advocating for their rights and interests in dealing with child-serving systems. Specific functions include investigations and reviews, individual and systemic advocacy, and public education around child and youth human rights.

Our work is guided by the **United Nations Convention on the Rights of the Child (UNCRC)**, a comprehensive child-rights framework that supports the development and well-being of children and youth. Canada is a signatory to the **UNCRC**.

The four guiding principles of the **UNCRC** are:

1. **Non-discrimination** – all rights apply to all children without exception.
2. **Best interests of the child** – this must be the first consideration in all decisions affecting children.
3. **Life, survival and development** – all children have the right to live and survive, and to develop to the maximum degree possible.
4. **Participation** – all children have the right to be heard and to participate in decisions affecting them in a way that is reflective of their age and developmental level.

The **UNCRC** exists because children and youth are a unique and vulnerable group that require special protection and recognition of their rights. Their views, experiences, and perspectives are frequently missing from public policy consultation, debate, and development. The OCYA urges the Department to meaningfully engage children and youth as part of their public consultation process for the review of **PHIA**. Article 12 of the **UNCRC** speaks specifically to the importance of children's views being heard and listened to.

It is also the position of the OCYA that a Childs Rights Impact Assessment (CRIA) be completed with respect to any proposed changes to **PHIA**, and any other substantive legislative or policy-based change that can reasonably be expected to impact children and youth.

What is a Child Rights Impact Assessment (CRIA)?

A Child Rights Impact Assessment (CRIA) is a tool for translating the **UNCRC** (discussed above) and the best interests of children and youth into policy and practice. A CRIA generally involves following a series of steps laid out in a formal model or template to evaluate the impacts of a proposed change to policy or legislation. Overall, the process aims to answer these central questions: what are the potential impacts of a proposal? Are there changes that could be made such that the proposal would better protect and promote the rights of children? And ultimately, can a recommendation be made about whether or not to proceed with the policy, program or legislation as proposed. (Canadian Coalition for the Rights of Children, 2026). Such assessments are meant to:

- improve public policy and contribute to better outcomes for children;
- ensure potential impacts to children are predicted, monitored and mitigated;
- consider short-term and long-term effects of policy on children;
- apply research and evidence to analysis of decisions;
- emphasize children's participation in decision making; and,
- provide an efficient process to verify that governments are meeting obligations to uphold children's rights.

In July 2023, Justice Canada launched the Child Rights Impact Assessment tool and e-learning course to assist public officials in considering the impacts of a new law, policy, program or other initiative on children. While primarily aimed at federal officials, Justice Canada asserts that this tool can equally be used by other governmental or non-governmental organizations, or by others who want to assess the impact of an initiative on children's rights. [CRIA Overview - Justice Canada](#)

UNICEF also aligns with the position that public policy is stronger when children and youth's best interests are a priority, and the impacts on children are specifically considered in policy development processes. They too provide professional development on the Child Rights Impact Assessment tool and process. It is our recommendation that a CRIA be completed for any proposed changes to PHIA in order to ensure that the rights of children and youth are upheld.

Discussion

As part of the review, the OCYA was provided with the 2023 PHIA Final Review Report as well as five guiding questions. Based on the perspective of the OCYA as a child and youth focused organization, the majority of the below submission pertains to Question 5, which speaks directly to the rights of children and youth with respect to their health and well-being. Following the response to this question is feedback around the remaining four questions provided by the Department.

Question 5: How should PHIA balance a young person's right to privacy with the role parents or guardians play in supporting their child's health and well-being? What factors should be considered when determining whether a young person has the capacity to make decisions about who can access their personal health information?

The perspective of the OCYA is guided, as noted above, by the **United Nations Convention on the Rights of the Child (UNCRC)**. Specific to this review, the **Convention** recognizes children and youth's rights to privacy under **Article 16**, to participate in decisions affecting them and have their views given due weight under **Article 12**, to seek and receive information under **Article 13**, and to enjoy the highest attainable standard of health under **Article 24**. It also recognizes, under **Article 5**, the responsibilities, rights and duties of parents and guardians to provide appropriate direction and guidance in a manner consistent with the child or youth's evolving capacities. **Article 3** requires that the best interests of the child be a primary consideration in all actions concerning children, while **Article 12** requires that children's views be given due weight in accordance with their age and maturity.

The **UNCRC** also provides specific directions concerning children living in alternate care arrangements. **Article 20** establishes that a child who is temporarily or permanently deprived of their family environment is entitled to special protection and assistance from the State, including appropriate alternative care. These children and youth require specific and timely consideration in relation to access to and control over their personal health information.

Broadly then, **PHIA** should recognize that young people are holders of their own privacy, participation and health rights, while also acknowledging that parents and guardians ordinarily play an essential role in promoting their children's health and well-being. Contrary to public discourse, these principles are not inherently in conflict. The view of the OCYA is that the appropriate objective should be **supported and evolving autonomy**, under which parent or guardian involvement is encouraged where it is safe and desired, while a young person who has capacity should exercise meaningful control over their personal health information.

Setting the Stage: Neither unrestricted parental access nor automatic exclusion

Determining the appropriate balance does not need to be framed as a choice between unrestricted parental access and the automatic exclusion of parents once a child reaches a fixed age, as both approaches can produce unintended harm.

Parents and guardians frequently help children and youth interpret health information, attend appointments, remember medical histories, manage medications and follow treatment plans. This role can be especially important for younger children, or those with complex, chronic or episodic health needs. In fact, parents are overwhelmingly the primary advocates for the rights of their children, a reality acutely evident here at the OCYA where parents account for the vast majority of requests for individual advocacy, year over year. Many young people want a parent, caregiver or other trusted person involved in their care, and in circumstances where that is appropriate, it should be supported.

However, automatic parental access to every part of a child or youth's health record can also create risks. A young person may avoid seeking health care or withhold important information if they believe that every consultation, test, medication or clinical note will automatically be disclosed. The Canadian Paediatric Society identifies confidentiality as a hallmark of quality adolescent health care, and reports that adolescents in particular are more likely to access services and disclose sensitive information when confidentiality is assured. Confidential care can strengthen trust, agency and young people's capacity to assume responsibility for their health (Canadian Paediatric Society, 2026).

Similarly, the World Health Organization (WHO) recognizes that mandatory parental or third-party authorization can result in breaches of confidentiality and create barriers to adolescent access to services. It recommends legal and regulatory frameworks that allow mature and competent adolescents to consent to or refuse treatment without mandatory parental involvement and that require health professionals to respect confidentiality.

Additionally, it is important to note that not all children and youth reside in home environments where there is positive and purposeful communication about their health, well-being or right to privacy. Others are unable to reside with their families of origin at all, given concerns about their well-being, safety or risk of harm. Thus, there are children and youth who would be at risk should their parent have access to their health information or exert undue influence over decisions with respect to their health and well-being. Consideration of this, and other vulnerable groups must be a central focus of any proposed changes.

The NL Context

MyHealthNL, powered by MyChart, already contains several promising features with respect to upholding the rights of children and youth. Automatic parental proxy access expires at age 12; youth aged 12 to 15 must consent to renewed parental access; youth can select among different access levels and remove access; and proxy access expires again at age 16. The youth consent process also asks whether the young person shares an email address or telephone number with another person.

These protections should be preserved, and PHIA should provide their underlying legal foundation. The WHO has cautioned that electronic health-record systems should not be assumed to benefit children and youth automatically, and enshrining stipulations for access to the health records of children and youth within legislation provides a legal framework for their protection.

PHIA should also require youth-safe privacy-by-design standards, including secure individual credentials, child-friendly explanations, safeguards for shared devices and contact information, confidential communications, and an appropriate process for youth who lack capacity or need assistance with selected functions. A young person should be able to involve a supportive adult without necessarily giving that person unrestricted access to the entire record.

The OCYA recommends that guardian proxy access continue to expire at age 12, with consent being required by young people from 12-15 for continued guardian access as this aligns with best practice from a child-rights and evidence-based perspective. However, in keeping with a balanced approach, the development of a mechanism whereby a guardian is able to appeal a young person's refusal, based on capacity, should be implemented.

A capable young person's decision should prevail

It is the OCYA's position that PHIA should expressly state that where a young person has capacity to make a particular health-information decision, their decision about access, use or disclosure prevails over a conflicting decision made by a parent, guardian, caregiver or government representative. This approach would be consistent with principles already reflected in Newfoundland and Labrador legislation and would also align the province with the leading Canadian approach in Ontario.

For example, The Children, Youth and Families Act requires that the best interests of the child or youth be the paramount consideration and expressly identifies the child or youth's opinion regarding their care, custody or services as a relevant factor. Section 56 requires a judge to provide a child who wishes to have their views known in a proceeding with a meaningful way to express them, including by meeting with the judge, testifying, submitting written material or another suitable method. The Act also permits a Manager or social worker to enter directly into a written services agreement with a youth in need of protective intervention, provided that the effect of the agreement is explained

to the youth. These provisions entrust children and youth with meaningful participation in decisions and formal processes that may have significant consequences for their care, family relationships and living arrangements.

The **Children, Youth and Families Act** also recognizes that children should receive direct information about serious decisions affecting them. Under **section 23**, where a child is removed from the care of a parent or another person, the manager or social worker must provide written notice to the child, if the child is 12 years of age or older, within 24 hours of the removal. That notice must explain why the child was removed. Children aged 12 or older must also receive notice of the presentation and protective-intervention hearings following removal. These provisions demonstrate that provincial law considers young people capable of receiving consequential legal information about decisions affecting their safety, care and family relationships.

The **Children's Law Act** similarly recognizes children's agency in significant family law matters. It requires courts, where possible, to consider a child's views and preferences to the extent that the child can express them and permits the child to be interviewed with the benefit of legal counsel. It also preserves the right of a child aged 16 or older to withdraw from parental control. These provisions reflect the principle that young people's participation and autonomy should increase in accordance with their age, maturity and circumstances.

Newfoundland and Labrador's legislation therefore already demonstrates an established recognition that children and youth may be given consequential information, heard directly in proceedings affecting them, enter formal agreements and exercise meaningful autonomy in matters concerning their care and family relationships. Recognizing a capable young person's authority over access to their personal health information would not be a departure from provincial law, rather extending the existing mechanisms regarding best interests, participation, procedural fairness and evolving autonomy into the health-information context.

From a Canadian perspective, Ontario provides a useful and well-developed Canadian model for making that principle explicit in health-information legislation. Under Ontario's **Personal Health Information Protection Act, 2004**, capacity is determined functionally rather than solely by age. Where a capable child under 16 and an authorized substitute decision-maker disagree, the capable child's decision prevails. Ontario's framework also limits parental authority in relation to certain treatment or counselling in which the child participated independently. This is particularly important where health information relates to sensitive care, personal identity, family conflict, or divorce and separation.

Factors for determining capacity

PHIA should define capacity as the ability to:

1. understand the information relevant to deciding who may access the personal health information; and
2. appreciate the reasonably foreseeable consequences of granting, refusing, limiting or withdrawing access.

This test should be applied to the specific decision at the specific time. A young person may have capacity to decide whether a parent sees an appointment or counselling note while needing assistance to understand a more complex disclosure involving an extensive clinical record. Capacity may also fluctuate because of illness, distress, medication or other circumstances. Nova Scotia's health-information legislation provides a useful functional definition based on understanding relevant information and appreciating the reasonably foreseeable consequences of a decision or lack of decision (Government of Nova Scotia, 2026).

The assessment should consider:

- the young person's ability to explain, in their own words, what information would be shared;
- whether they understand who would receive it and how that person may use it;
- whether they appreciate the potential benefits and risks of permitting or refusing access;
- whether they understand that consent can be limited, changed or withdrawn;
- whether they can compare available options, including partial or graduated access;
- whether they can communicate a stable and voluntary choice;
- whether they are being pressured, intimidated or influenced by a parent, caregiver or another person;
- whether communication supports, interpretation or disability accommodations are required; and
- whether family violence, exploitation, placement instability or another safety concern affects the voluntariness or consequences of the decision.

Age and maturity are relevant, but they should not be conclusive. Disability, diagnosis, involvement with child welfare, disagreement with adults, or making a decision that others consider unwise should not by themselves establish incapacity. The assessment should focus on the young person's decision-making abilities rather than the outcome preferred by the assessor.

Procedural safeguards

A capacity-based standard will only be effective if **PHIA** establishes fair and understandable procedures. Capacity should be presumed unless there are reasonable grounds to question it. The assessment should be completed by an appropriately qualified person, documented, and explained to the young person in developmentally appropriate language. A finding of incapacity should identify the particular decision affected and should not result in the permanent or total loss of control over the young person's health information.

The young person should have access to communication accommodations and be permitted to involve a trusted support person or independent advocate. They should also have a timely way to challenge a capacity determination or an access decision before an independent body. General Comment No. 12 on the right of the child to be heard emphasizes that children should receive relevant preparation, have their capacity assessed fairly, be told what weight was given to their views, and have access to complaints and remedies.

As noted above, special attention is required for children in foster, kinship or group care. Placement status should not remove a capable child's privacy rights, and not every adult involved with the child should receive the same information. **PHIA** should distinguish among legal decision-making authority, the information required for safe daily care and general involvement in the child's life. Caregivers should receive the minimum information necessary to meet identified care and safety needs, while highly sensitive or unrelated information remains protected.

Additional Questions

The preceding question is the primary focus of the OCYA's submission because it directly addresses the privacy rights, decision-making authority and evolving capacities of children and youth, as well as the important role of parents and guardians. However, these rights cannot be fully protected through provisions governing parental access and capacity alone. Custodial practices, digital-system design, cybersecurity, information sharing, research and emerging technologies can either support or undermine a child or youth's ability to exercise their rights under **PHIA**. The OCYA therefore offers focused responses to the remaining consultation questions, limited to matters that have distinct implications for the rights, safety and best interests of children and youth.

"What additional responsibilities should health-care organizations and professionals have for protecting personal health information?"

PHIA should require custodians to recognize children and youth as holders of privacy and access rights and to maintain documented, child-responsive procedures for capacity, consent, access, representation and disclosure.

A custodian should be responsible for:

- verifying the authority of anyone seeking access to a child's information;
- distinguishing between parental status, legal decision-making authority and day-to-day caregiving responsibilities;
- assessing capacity fairly and in relation to the particular decision;
- providing children with plain-language information about privacy, access and confidentiality;
- documenting capacity assessments and reasons for decisions;
- applying the minimum-necessary principle when sharing information;
- providing communication and disability accommodations;
- ensuring that children and youth can correct inaccurate information; and
- directing children and youth to an accessible complaint or review process.

A relationship with a child should not automatically provide access to their complete health record. This is especially important where access is sought by foster parents, kinship caregivers, group-home staff, social workers, biological parents, non-custodial parents or government representatives.

PHIA should distinguish among:

- authority to make a decision for a child who lacks capacity;
- information a caregiver requires to provide safe daily care; and
- information sought for general involvement, oversight or case management.

“How can PHIA be strengthened to better protect personal health information in today's digital health-care environment, including cybersecurity, electronic records and emerging technologies?”

PHIA should be grounded in the principles of safety and privacy by design, and the unique protection of children's data for electronic health records, patient portals, virtual-care platforms and emerging technologies.

Minimum requirements should include:

- separate and secure child and youth credentials;
- multi-factor authentication and strong identity verification;
- graduated and revocable proxy access;
- child-friendly explanations of portal functions and privacy choices;
- safeguards for shared devices, email addresses and telephone numbers;
- confidential communication options;
- clear distinctions between clinical, administrative and messaging access;
- protection against disclosure through notifications and administrative metadata;

- recorded and reviewable emergency access; and
- appropriate processes for youth who lack capacity, have fluctuating capacity or need help with selected functions.

As discussed above, MyHealthNL already includes several promising youth protections, including expiry of parental proxy access at age 12, youth consent for proxy access between ages 12 and 15, different proxy-access levels and expiry of access at age 16. PHIA should preserve these safeguards and establish them as minimum legal requirements so that protection does not depend solely on the current platform or operational policy.

Cybersecurity and privacy impact assessments for major systems should include a separate analysis of risks to children. Breach-response planning should also consider whether direct notice should be given to a capable young person and whether notifying a parent could create a safety or confidentiality concern.

The Government of Newfoundland and Labrador already has a responsible-AI policy that recognizes both the opportunities and risks associated with AI and includes an assessment process for responsible use. CorCare materials also contemplate advanced AI tools and AI scribing.

PHIA should require that health-related AI assessments include a child-rights analysis addressing:

- privacy and data minimization;
- accuracy and the consequences of incorrect outputs;
- bias and discrimination;
- explainability;
- accessibility;
- commercial and third-party involvement;
- whether children's data will be used to train systems; and
- differential impacts on children in care, Indigenous and racialized children, children with disabilities and children in small or remote communities.

“How can PHIA support the appropriate sharing of health information among health-care providers and organizations while maintaining strong privacy protections?”

PHIA should support timely sharing for a child's direct care while requiring purpose-based, role-based and minimum-necessary access. A child's involvement with several services should not make their complete health history available to every professional, caregiver or organization involved in their life. Too little sharing may result in fragmented treatment, missed information, repeated assessments and inadequate services. Too much sharing may unnecessarily distribute counselling information, family history, child-protection records or other sensitive information.

NL Health Services describes CorCare as providing clinicians and staff within the circle of care with access to a shared real-time record. CorCare Link provides approved community clinicians and clinic teams with role-dependent access to selected documentation, referrals, results and secure messaging.

PHIA should build on this role-based approach by requiring that:

- access be connected to a defined care-related purpose;
- users receive only the information necessary for their role;
- confidentiality directions made by a capable young person follow the information across interoperable systems;
- emergency overrides be limited, recorded and reviewable;
- young people receive understandable information about who may access their records;
- inappropriate access be investigated by a clearly identified responsible organization; and
- correction requests and consent restrictions remain effective when information moves between custodians.

These protections are particularly important for children in foster, kinship or group care and for youth receiving health, mental health, disability, education and child protection services concurrently. **PHIA** should distinguish clinical treatment from daily caregiving and administrative case management. Placement status or organizational involvement should not create unrestricted access.

The Act should also clarify accountability where several custodians, agents or connected organizations use the same information. A child should not bear the burden of identifying which organization is responsible for correcting an error, investigating access or enforcing a restriction.

“What safeguards should be in place when personal health information is used for research, quality improvement, artificial intelligence or other secondary purposes?”

PHIA should require heightened scrutiny where children and youth’s information is used beyond their direct care. Approval should consider:

- whether the use is necessary;
- whether less identifiable information could achieve the purpose;
- whether the anticipated public benefit is proportionate to the privacy risk;
- whether the information could be re-identified;
- whether the use could stigmatize or disadvantage children;
- whether commercial organizations are involved; and
- whether particular groups of children could be disproportionately affected.

The following safeguards should apply:

- child-rights impact assessments for significant projects;
- research ethics or equivalent independent review;
- data minimization;
- secure research environments;
- strict role-based access;
- enforceable prohibitions against re-identification;
- restrictions on onward disclosure and unrelated commercial use;
- clear retention and destruction requirements;
- audits and public reporting;
- children's-rights expertise within governance bodies; and
- appropriate youth or lived-experience representation.

De-identification should not be treated as an absolute guarantee. In Newfoundland and Labrador's rural and remote communities, combinations of age, geographic location, diagnosis, family circumstances or placement status may make a child identifiable even where direct identifiers have been removed. This should be treated as a contextual risk requiring continuing governance.

Where consent is relied upon, capacity should be assessed in relation to the particular secondary use. Children and youth should receive plain-language information about the purpose, data involved, safeguards, commercial participants and complaint process.

Conclusion

PHIA should recognize children and youth as rights-holders throughout the Act, not only in provisions concerning parental access. Parents and guardians should be supported in fulfilling their responsibilities, but family involvement should be consistent with the child's capacity, wishes, safety and best interests. A capable young person's decision about access to their personal health information should prevail, subject to limited and proportionate legal exceptions as discussed above. These rights must also be reflected in custodial responsibilities, digital-system design, cybersecurity, information sharing, research, quality improvement and artificial intelligence.



CHILDREN & YOUTH

NEWFOUNDLAND & LABRADOR

November 27, 2020

Access to Information and Protection of Privacy Statutory Review 2020
3rd Floor, Beothuck Building
20 Crosbie Place
St. John's, NL
A1B 3Y8

Attention: The Honourable David B. Orsborn – Committee Chair

As an independent statutory officer that regularly obtains personal information with respect to children and youth in the Province, I would like to thank you for extending the invitation to make a submission to the Statutory Review Committee for the **Access to Information and Protection of Privacy Act**.

Section 3 of the **Child and Youth Advocate Act**, S.N.L. 2001 c. 12.01 establishes the office of the Child and Youth Advocate and provides a useful summary of the role and functions it performs. This section states:

3. The Office of the Child and Youth Advocate is established

- (a) to ensure that the rights and interests of children and youth are protected and advanced and their views are heard and considered;
- (b) to ensure that children and youth have access to services and that their complaints relating to the provision of those services receive appropriate attention;
- (c) to provide information and advice to the government, agencies of the government and to communities about the availability, effectiveness, responsiveness and relevance of services to children and youth;

(c.1) to review and investigate matters affecting the rights and interests of children and youth; and

(d) generally, to act as an advocate of the rights and interests of children and youth.

In fulfilling this advocacy mandate, my office works on behalf of some of the most vulnerable children and youth in Newfoundland and Labrador. The matters are highly sensitive, and confidentiality is important for the children, their families, complainants, and for witnesses who are compelled to participate in an investigative process of the Office of the Child and Youth Advocate.

It is against this background and context that the **Access to Information and Protection of Privacy Act, 2015 S.N.L. 2015 c. A-1.2 ("ATIPPA")** must be examined to assure that the advocate can continue to advocate, review, and investigate matters in a complete and thorough manner without information obtained during its investigations being subject to disclosure under the ATIPPA.

Legislative Overview:

Section 2(x)(v) of the ATIPPA defines a public body as "the House of Assembly and statutory offices, as defined in the **House of Assembly Accountability, Integrity and Administration Act**".

Section 2 (r) of the **House of Assembly Accountability, Integrity and Administration Act, 2007 S.N.L. c. H-10.1** defines statutory office as:

(r) "statutory office" means the office and administrative staff directly serving the

(i) Chief Electoral Officer,

(ii) Commissioner for Legislative Standards,

(iii) Child and Youth Advocate,

(iv) Information and Privacy Commissioner,

(v) Citizens' Representative,

(v.1) Seniors' Advocate, and

(vi) other offices of the House of Assembly, with the exception of the office of the Auditor General, that may be established under an Act; and

Section 41 of the ATIPPA is a mandatory exception to access to information entitled, "Disclosure of House of Assembly service and statutory office records" and states:

41. The Speaker of the House of Assembly, the officer responsible for a statutory office, or the head of a public body shall refuse to disclose to an applicant information

(a) where its non-disclosure is required for the purpose of avoiding an infringement of the privileges of the House of Assembly or a member of the House of Assembly;

(b) that is advice or a recommendation given to the Speaker or the Clerk of the House of Assembly or the House of Assembly Management Commission that is not required by law to be disclosed or placed in the minutes of the House of Assembly Management Commission; or

(c) in the case of a statutory office as defined in the House of Assembly Accountability, Integrity and Administration Act, **records connected with the investigatory functions of the statutory office. (emphasis added).**

The origins of the "investigatory privilege" of the statutory offices can be found in the report entitled "Rebuilding Confidence" authored by former Chief Justice Derek Green following the constituency allowance scandal involving the House of Assembly. At page 5-20 he states as follows:

With respect to the statutory offices, I recognize that these offices deal with sensitive and confidential information gained through investigations into the lives of individual citizens who approach them for assistance. That sort of information, often given in an expectation that privacy will be respected, should not be disclosed. Nevertheless, there is no reason why general financial and other information about the operation of the offices themselves and the expense of the heads of the offices and the staff should not be available. [Emphasis Added]

The office of the Auditor General should, however, be put in a separate category. At present there is a general obligation of confidentiality imposed on that office by section 21 of the Auditor General Act with respect to matters that come to the staff's knowledge in the course of their work. The Auditor General occupies a special – some would say unique – place in the government. This is cause for proceeding slowly before wrapping that office into any system of general reform of the legislative branch. Having said that, I believe a case can be made for subjecting the Auditor General to basic access to

information requirements about the financial and administrative organization of the office. The Auditor General is, by law, an officer of the House and is responsible, just as are other officers, for the expenditure of public money. I am aware, however, that some consideration is being given to making substantial revisions to the Auditor General's constituent legislation. The better approach for the present, therefore, is to exempt the office from the reforms being recommended in this report and to recommend that the application of access to information provisions be considered at the time of the general revision of the Act.

At the conclusion of his report, Green J. recommended draft legislation which included consequential amendments to the ATIPPA at s. 67(4) which reads as follows:

The Act is amended by immediately adding after s.30 the following:

30.1 The Speaker of the House of Assembly or the head of a statutory office shall refuse to disclose to an applicant information

(a) where its non-disclosure is required for the purpose of avoiding an infringement of the privileges of the House of Assembly or a member;

(b) that is advice or recommendations given to the speaker or the Clerk of the House of Assembly or the House of Assembly Management Commission that is not required by law to be disclosed or placed in the minutes of the House of Assembly Management Commission; and

(c) in the case of a statutory office, as defined in the **House of Assembly Accountability, Integrity and Administration Act**, records connected with the investigatory functions of the statutory office.

I agree that general financial information and other information regarding the operation of this Office and the expense of the head of the office and the staff should be available. This is in keeping with the recommendations of Green J. and promotes accountability and transparency in our democratic institutions. However, consideration should be given to strengthening the prohibition of disclosure with respect to investigatory records contained in s.41(c).

Guidance with respect to the interpretation of s.41 (c) is found in Report A-2010-007 of the Office of the Information and Privacy Commissioner which involved an access to information request received by the Office of the Citizens Representative for information in its investigative file. In response to this request, the Citizens' Representative stated the following with respect to s.41(c):

Crucial to its ability to access information in the course of an investigation is its exemption from disclosing records connected with its investigatory function under the ATIPPA. We contend that the spirit and intent of the exemption was, inter alia, to preserve the integrity of the investigative processes used by Statutory Officers of the House, and to provide a measure of comfort for complainants, respondents, and witnesses participating in investigations that information will not be recklessly or mistakenly dispensed in access requests to OCR flowing from OCR investigations. If OCR cannot ensure respondents and witnesses that information it receives stays within the confines of the investigatory function clause in Section 30.1(c) , it would have an excessively difficult time assuring that both full documentary disclosure and candid witness evidence has been given. Its investigative powers would, thus, be fettered. [Emphasis Added].

In Report A-2010-007, the Commissioner concluded that s. 41(c) was applicable to the records in question and provided guidance with respect to the interpretation of the statutory exception to access. The Commissioner noted that this was an exception that appears unique to this Province. The Commissioner also recognized the broad nature of the exception in identifying that s.41(c) protects records “connected with” the investigatory functions of the statutory office. At paragraphs 23 to 26 the Commissioner stated the following:

[23] As noted, the OCR withheld the records from the Applicant on the basis of section 30.1(c). Section 30.1(c) states as follows:

30.1 The Speaker of the House of Assembly or the officer responsible for a statutory office shall refuse to disclose to an applicant information [...]

(c) in the case of a statutory office as defined in the House of Assembly Accountability, Integrity and Administration Act, records connected with the investigatory functions of the statutory office.

[24] Section 30.1(c) has not yet been considered by this Office, nor could any reference to any comparable provision be found in the reports of any other jurisdiction in Canada. Section 2(p)(v) of the ATIPPA indicates that the definition of a public body includes “the House of Assembly and statutory offices as defined in the House of Assembly Accountability, Integrity and Administration Act. The OCR is clearly a “statutory office” as defined in section 2(r)(v) of the House of Assembly Accountability, Integrity and Administration Act. In respect of what constitutes “investigatory functions”, the Concise Oxford English Dictionary defines “investigate” and its derivative “investigatory” as follows:

- *v. carry out a systematic or formal inquiry into (an incident or allegation) so as to establish the truth. › carry out research into (a subject). › make a search or systemic inquiry.*

[25] It further defines “function” as follows:

- *n. 1 an activity that is natural to or the purpose of a person or thing [...]*

[26] *These definitions provide useful guidance in this particular circumstance as no relevant jurisprudence or report could be located. This does not mean that further consideration of the definition of “investigatory functions” will not be required in relation to another set of facts in another matter. Furthermore, it is important to note that section 30.1(c) is broad and protects records “connected with the investigatory functions of the statutory office.” It encompasses more than actual investigation documents or information and this may necessitate further consideration in another matter.*

The interpretation of s.41(c) provided by the Commissioner in Report A-2010-007 recognizes that in order for a statutory office to effectively carry out an investigation, all records “connected with” the investigatory function of the office must remain confidential and not subject to review by an access to information applicant. To preserve the integrity of a statutory investigation, which often times involve very personal matters, in particular the personal information of vulnerable children and youth, investigatory privilege is necessary to ensure that witnesses remain candid in providing full and complete evidence to the Advocate. To allow an applicant to access such records would have a “chilling effect” upon the manner in which all statutory offices as defined in s.2(r) conduct their investigations and would defeat the purpose of the exception.

While it would be a rare occasion where an applicant would seek access to the investigatory records connected with the Office of the Child and Youth Advocate, there are concerns with the operation of s.33 of the ATIPPA and the impact it could possibly have upon records in the custody or control of the Advocate. Section 33 of the ATIPPA is entitled “Information from a Workplace Investigation” and creates limited access rights to a party involved in such an investigation. It is not unusual for the Advocate in performing its statutory role to obtain information about the conduct of health care professionals, social workers engaged in child protection and related services, youth corrections staff, and other public servants and third parties. Depending on the circumstances it is possible that some of this information could be characterized as information relevant to a workplace investigation. In such circumstances the ATIPPA should be clear, that notwithstanding s.33 of the ATIPPA, no records connected with the investigatory functions of the Advocate should be disclosed to an applicant.

Additionally, it should be noted that not all investigations result in formal reports being prepared. There are any number of reasons why an investigation may not result in a published report. Section 41(c) should be strengthened to make it clear that irrespective of a report being prepared following an investigation, no access will be provided to the investigative file or the report.

In light of the foregoing the Office of the Child and Youth Advocate recommends that s.41(c) be amended as follows:

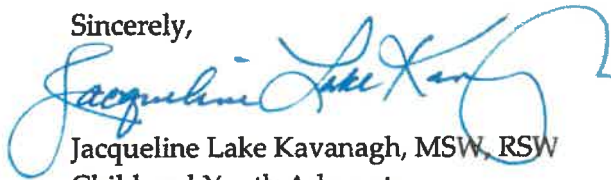
The Speaker of the House of Assembly, the officer responsible for a statutory office, or the head of a public body, notwithstanding s.33, shall refuse to disclose to an applicant information in the case of a statutory office as defined in the *House of Assembly Accountability, Integrity and Administration Act*, records or reports connected with the investigatory functions of the statutory office.

As Child and Youth Advocate, I take the best interests of children very seriously and every effort is made to ensure reports do not identify individual children and youth. Readers are asked to respect the privacy of these vulnerable young people and their families and to not focus on the identities or on specific communities/locations involved. The purpose of the investigative report is to learn from the circumstances described, and to make recommendations for systemic change to prevent future occurrences, and therefore better protect the rights of children and youth.

This Office receives minimal requests/applications for information. The experience has been positive in using ATIPPA, and there are no difficulties in meeting the timelines and operation of the Act.

Thank you for your consideration in reviewing this submission.

Sincerely,



Jacqueline Lake Kavanagh, MSW, RSW
Child and Youth Advocate



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2022-026

November 3, 2022

Office of the Child and Youth Advocate

Summary:

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* to the Office of the Child and Youth Advocate for records relating to the Complainant and their minor children. The Office of the Child and Youth Advocate responded by withholding all responsive records under section 41 of the Act. The Complainant made a complaint to this Office arguing jurisdiction, procedural fairness and the public interest. The Commissioner found that the Office of the Child and Youth Advocate's application of section 41 was appropriate and recommended the public body continue to withhold the records.

Statutes Cited:

[*Access to Information and Protection of Privacy Act, 2015*](#), SNL 2015, c. A-1.2, section 41.

[*House of Assembly Accountability, Integrity and Administration Act*](#), SNL 2007, c. H-10.1, section 2(r).

[*Child and Youth Advocate Act*](#), SNL 2001, c. C-12.01.

Authorities Relied On:

NL OIPC Report [*A-2018-008*](#).

BACKGROUND

- [1] The Complainant submitted an access request under the *Access to Information and Protection of Privacy Act, 2015* ("ATIPPA, 2015" or the "Act") to the Office of the Child and Youth Advocate ("OCYA") for records relating to an OCYA investigation regarding the Complainant and their minor children. In particular they sought:

Notice to Investigate, Notice of Proposed Steps, and Report and any and all documents relating to this investigation regarding my children (names and DOB of children removed) and myself.

- [2] OCYA responded by denying access to all requested records under section 41(c) of *ATIPPA, 2015*. The Complainant did not agree with this response and filed a complaint with this Office.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [4] The Office of the Child and Youth Advocate stated that all records responsive to the request are in relation to its investigatory function and therefore must be withheld under section 41. Additionally, the OCYA submitted that it is an oversight body and that its investigations are generally in relation to the actions taken by other government bodies and agencies, and not in relation to specific individuals or families.

COMPLAINANT'S POSITION

- [5] The Complainant argued that a Notice to Investigate could not form part of an investigation by the OCYA as it would have been issued prior to the start of an investigation. The Complainant also questioned the OCYA's jurisdiction to conduct an investigation. The Complainant also made arguments relating to procedural fairness, the purpose of *ATIPPA, 2015*, and the public interest.

ISSUES

- [6] The sole issue for this report to address is whether the Office of the Child Youth Advocate's application of section 41 was appropriate.

DECISION

- [7] Section 41(c) of the *ATIPPA, 2015* is a mandatory, record-level exception to access regarding records related to the investigatory function of a statutory office. "Statutory office" is defined by section 2(r)(iii) of the *House of Assembly Accountability, Integrity and Administration Act* and includes the OCYA. Section 41(c) does not allow for the exercise of discretion to release such records, nor is there any provision within *ATIPPA, 2015* to override its application.
- [8] Further, the OCYA's investigatory functions are set out in the *Child and Youth Advocate Act*, which empowers the OCYA to review and investigate matters relating to children and youth. The OCYA's investigatory function is primarily related to investigating the actions of government departments and agencies as they relate to children and youth, rather than investigating individual children and families.
- [9] As noted previously in our Report A-2018-008, the purpose of section 41 is to protect the integrity and confidentiality of a statutory office's investigatory functions and it is intentionally broad, requiring a public body to withhold records in their entirety. Specifically, Report A-2018-008 states (at paragraph 40):

The Complainant also argued that none of the documents excepted or redacted under section 41 actually pertain to the investigative functions of the statutory office, as it is his opinion that the responsive records pertain only to the initiation, preparation and internal approval of the applications to disregard his access requests. This argument fails to recognize that the records withheld under section 41 were the applications themselves, records submitted to our Office in support of the applications to disregard, or correspondence to and from our Office about the applications, which were an integral part of our investigation.

[10] Section 41(c) not only applies to records that are created over the course of a formal investigation by a statutory office, but also applies to records *relating* to that investigatory function. As such, records created prior to the launch of an official investigation, or in the course of determining if an investigation is necessary, still *relate to* the Office's investigatory function and therefore are required to be withheld.

[11] There is no evidence that the OCYA was acting outside of its mandate, notwithstanding the Complainant allegations that the OCYA's investigation exceeded its statutory authority. Additionally, the Complainant's assertion that the records should be released on the basis of the purpose of *ATIPPA, 2015* and the public interest ignore the fact that section 41 is a mandatory exception to access, and it has no public interest override provision. Therefore, once it is found to apply the analysis is complete and the records must be withheld.

RECOMMENDATIONS

[12] Under the authority of section 47 of the *Access to Information and Protection of Privacy Act, 2015* I recommend that the Office of the Child and Youth Advocate continue to withhold the records.

[13] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Office of the Child and Youth Advocate 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.

[14] Dated at St. John's, in the Province of Newfoundland and Labrador, this 3rd day of November 2022.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-028

June 29, 2023

Office of the Child and Youth Advocate

Summary:

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* to the Office of the Child and Youth Advocate for records relating to the Complainant and their minor children. The Office of the Child and Youth Advocate responded by granting the Complainant's request in part (by providing the Complainant with email communications between itself and the Complainant), and withholding all other responsive records under section 41 of the Act. The Complainant made a complaint to this Office arguing section 41 should not apply as they did not believe the matter to be an investigation. The Commissioner found the Office of the Child and Youth Advocate's application of section 41 was appropriate and recommended the public body continue to withhold the records.

Statutes Cited:

[*Access to Information and Protection of Privacy Act, 2015*](#), SNL 2015, c. A-1.2, section 41.

[*House of Assembly Accountability, Integrity and Administration Act*](#), SNL 2007, c. H-10.1, section 2(r).

[*Child and Youth Advocate Act*](#), SNL 2001, c. C-12.01, sections 13 and 15.

Authorities Relied On:

NL OIPC Reports [A-2022-026](#), [A-2018-008](#).

BACKGROUND

- [1] The Complainant submitted an access request under the *Access to Information and Protection of Privacy Act, 2015* ("ATIPPA, 2015" or the "Act") to the Office of the Child and Youth Advocate ("OCYA") for records relating to an OCYA investigation regarding the Complainant and their minor children. In particular they sought:

All email communications between me and the OCYA, between different staff of the OCYA, and between CSSD and the OCYA as well as call logs if some exist. All information and allegations regarding my children: [named child 1], [named child 2], [named child 3].

- [2] OCYA responded by providing access to the first part of the request, "all email communications" between the Complainant and OCYA, but denied access to all other requested records under section 41(c) of *ATIPPA, 2015*. The Complainant did not agree with this response and filed a complaint with this Office.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [4] The Office of the Child and Youth Advocate submitted that all records responsive to the request are in relation to its investigatory function and duties and were collected as part of those, citing specifically sections 13(1) and 15(1) of the *Child and Youth Advocate Act*, which state the following:

13. (1) *The advocate and every person employed under the advocate shall keep confidential all matters that come to their knowledge in the exercise of their duties or functions under this Act.*

15. (1) *In carrying out the duties of the advocate's office, the advocate may*
 (a) *receive, review and investigate a matter relating to a child or youth or a group of them, whether or not a request or complaint is made to the advocate;*

- (b) *advocate or mediate or use another dispute resolution process on behalf of a child, youth or a group of them, whether or not a request or complaint is made to the advocate;*
- (c) *where advocacy or mediation or another dispute resolution process has not resulted in an outcome the advocate believes is satisfactory, conduct an investigation on behalf of the child or youth or a group of them, whether or not a request or complaint is made to the advocate;*
- (d) *initiate and participate in, or assist children and youth to initiate and participate in, case conferences, administrative reviews, mediations, or other processes in which decisions are made about the provision of services;*
- (e) *meet with and interview children and youth;*
- (f) *inform the public about the needs and rights of children and youth including about the office of the advocate; and*
- (g) *make recommendations to the government, an agency of the government or communities about legislation, policies and practices respecting services to or the rights of children and youth.*

[5] OCYA noted that the specific matter giving rise to this access request involved a preliminary inquiry into the responsiveness of the school environment to identified concerns for the named children. OCYA submitted that its mandate is to ensure that departments and entities, are responding appropriately and effectively. Given this, it noted:

As any formal investigation may arise out of an initial communication to our office, such communications with other parties regarding children and youth in receipt of government services are records connected with the investigatory function of the OCYA. Therefore the OCYA must deny access to these records. If these OCYA records were subject to disclosure, it would have a profound effect on individuals making complaints to our office, would negatively impact children and youth in the province, and would significantly impact the effectiveness of the core mandate of our office.

[6] However, despite this assessment in support of its application of section 41(c) of ATIPPA, 2015, OCYA also acknowledged it espouses the spirit and intent of the Act to provide the public with the right of access to records wherever possible, where that does not infringe on section 41(c):

Whereas part of the Applicant's request sought email correspondence between the Applicant herself and the OCYA, we believed it prudent to provide same in

the spirit of access as the Applicant/Mother was the initial source of the advocacy request to the OCYA.

COMPLAINANT'S POSITION

- [7] The Complainant argued that the matter is not an investigation and therefore section 41(c) should not apply, "This is clearly not an investigation, as they had nothing to investigate: I asked the OCYA if they could ask the school to respect the law."

ISSUES

- [8] The sole issue for this Report to address is whether the Office of the Child Youth Advocate's application of section 41(c) was appropriate.

DECISION

- [9] Section 41(c) of *ATIPPA, 2015*, sets out the following:

41. The Speaker of the House of Assembly, the officer responsible for a statutory office, or the head of a public body shall refuse to disclose to an applicant information

(c) in the case of a statutory office as defined in the House of Assembly Accountability, Integrity and Administration Act, records connected with the investigatory functions of the statutory office.

- [10] Section 41(c) of *ATIPPA, 2015* is a mandatory, record-level exception to access regarding records related to the investigatory function of a statutory office. "Statutory office" is defined by section 2(r)(iii) of the *House of Assembly Accountability, Integrity and Administration Act* and includes the OCYA. Section 41(c) does not allow for the exercise of discretion to release such records, nor is there any provision within *ATIPPA, 2015* to override its application.

- [11] Further, the OCYA's investigatory functions are set out in the *Child and Youth Advocate Act*, as noted above, which empowers the OCYA to review and investigate matters relating to children and youth. The OCYA's investigatory function is primarily related to investigating the actions of government departments and agencies as they relate to children and youth, rather than investigating individual children and families.

- [12] As noted previously in our Reports A-2022-026 and A-2018-008, the purpose of section 41(c) is to protect the integrity and confidentiality of a statutory office's investigatory functions and it is intentionally broad, requiring a public body to withhold records in their entirety. Specifically, this Office highlighted at paragraph 40 of Report A-2018-008:

The Complainant also argued that none of the documents excepted or redacted under section 41 actually pertain to the investigative functions of the statutory office, as it is his opinion that the responsive records pertain only to the initiation, preparation and internal approval of the applications to disregard his access requests. This argument fails to recognize that the records withheld under section 41 were the applications themselves, records submitted to our Office in support of the applications to disregard, or correspondence to and from our Office about the applications, which were an integral part of our investigation.

- [13] Section 41(c) not only applies to records that are created over the course of a formal investigation by a statutory office, but also applies to records *relating to* that investigatory function. As such, records created prior to the launch of an official investigation, or in the course of determining if an investigation is necessary, still relate to the Office's investigatory function and therefore are required to be withheld.
- [14] There is no evidence that the OCYA was acting outside of its mandate, and in fact, its efforts to disclose to the Complainant the email correspondence involving the Complainant directly, showed its willingness to adhere to the spirit and intent of *ATIPPA, 2015*, while balancing its obligations under section 41.

RECOMMENDATIONS

- [15] Under the authority of section 47 of the *Access to Information and Protection of Privacy Act, 2015*, I recommend the Office of the Child and Youth Advocate continue to withhold the remaining responsive records.
- [16] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Office of the Child and Youth Advocate 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.

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 29th day of June 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador