



**Office of the Information and Privacy Commissioner for Nova Scotia**  
**Report of the Commissioner (Review Officer)**  
**Tricia Ralph**

**REVIEW REPORT 22-01**

**January 7, 2022**

**Dalhousie University**

**Summary:** The applicant sought access to records containing evaluative and opinion material in relation to his application for admission to an academic program. Dalhousie University (public body) denied access to some information in the responsive records under s. 19C(a)(ii) of the *Freedom of Information and Protection of Privacy Act (FOIPOP)*, which gives the public body discretion to withhold personal information compiled solely for the purpose of admission to an academic program. The Commissioner determines that the public body is authorized to withhold the requested information. She finds that *FOIPOP* specifically permits universities to refuse access to precisely this information in order ensure that information provided about a candidate's suitability, eligibility and qualifications for admission to an academic program of an educational institution is frank, candid and complete. She recommends that the public body continue to withhold the requested information.

**INTRODUCTION:**

[1] The applicant sought admission into an academic program run by Dalhousie University (public body). His application was denied. He then requested access to a copy of the information gathered during the assessment of his application. In response, the public body identified 131 pages of responsive records. Initially, the public body withheld information citing four exemptions. Following the informal resolution process with this office, only 13 pages remain at issue, which the public body withheld portions of under s. 19C(a)(ii) of the *Freedom of Information and Protection of Privacy Act (FOIPOP)*.

[2] The records at the heart of this review are three interdisciplinary admissions reports, three reference letters, an email exchange and notes of a conversation the public body's employee had with an external reviewer. Each of the records was partially disclosed to the applicant so that he is aware of the identity of the individuals involved, the role they played and the questions they were asked. However, the public body withheld the substance of the comments made by these individuals citing s. 19C(a)(ii). Whether the public body was entitled to withhold this information is the only remaining issue before me.

## ISSUE:

[3] Was the public body authorized to refuse access to information under s. 19C(a)(ii) of *FOIPOP* because the information is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability for admission to an academic program?

## DISCUSSION:

### Burden of proof

[4] The public body bears the burden of proving that the applicant has no right of access to a record or part of a record.<sup>1</sup>

### **Was the public body authorized to refuse access to information under s. 19C(a)(ii) of *FOIPOP* because the information is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability for admission to an academic program?**

[5] *FOIPOP* gives public bodies discretion to withhold information that was compiled in the admissions process. For the reasons set out below, I find that the public body is authorized to withhold the information at issue under s. 19C(a)(ii) of *FOIPOP*.

[6] Section 19C(a)(ii) provides:

19C The head of a university may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled solely for the purpose of

(a) determining the applicant's suitability for

...

(ii) admission to an academic program,

[7] Section 19C has two unique features. First, it can only be applied by a university. No other public body is entitled to rely on this provision. Second, it is one of only two provisions in *FOIPOP* that specifically permit a public body to withhold the personal information of an applicant.<sup>2</sup>

[8] One of the purposes of *FOIPOP* is to give individuals a right of access to personal information about themselves.<sup>3</sup> This right is subject only to limited and specific exemptions. Section 19C(a)(ii) is one of those limited and specific exemptions.

[9] In order for s. 19C(a)(ii) to apply, three things must be true:

1. The information at issue must qualify as "personal information";
2. The information must be "evaluative or opinion material"; and
3. The information must have been compiled solely for the purpose of determining the applicant's suitability for admission to an academic program.

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<sup>1</sup> *FOIPOP* s. 45.

<sup>2</sup> Section 18 of *FOIPOP* permits a public body to withhold the applicant's personal information if disclosure could reasonably be expected to result in threats to safety.

<sup>3</sup> *FOIPOP* s. 2(a)(ii) and 2(c).

[10] As with every discretionary exemption, once a public body has determined that the exemption can be applied, it needs to ask itself if the exemption should be applied. This is referred to as the public body's exercise of discretion.

[11] Section 49(c.1)(ii) of the Ontario *Freedom of Information and Protection of Privacy Act*<sup>4</sup> is similar to Nova Scotia's s. 19C(a)(ii). It differs only in that the Ontario provision has the additional requirement that the information be supplied implicitly or explicitly in confidence. In determining that letters of reference and assessments of faculty readers were subject to the exemption, an Ontario adjudicator discussed the purposes behind this unique exemption:

I find that evaluations and assessments such as the information the appellant seeks in this appeal is precisely the type of information at which section 49(c.1)(ii) is aimed, and that this exemption is clearly related to the legislative objectives of allowing frank, candid and complete information about a candidate's suitability, eligibility and qualifications for admission to an academic program of an educational institution to be reviewed and held in confidence.<sup>5</sup>

[12] In another recent decision, an Ontario adjudicator noted that letters of reference for a candidate's application for admission to a PhD program were exempt from disclosure under s. 49(c.1)(ii) because they contained precisely the type of evaluative and assessment information at which s. 49(c.1)(ii) is aimed.<sup>6</sup>

### ***Position of the applicant***

[13] In his representations, the applicant stated that he believes the withheld information had some bearing on his graduate studies application and the public body's subsequent decision to deny him admission to his chosen program. The applicant explained that he believes the release of that information would serve justice.

### ***Position of the public body***

[14] In its representations, the public body stated that the admissions process is a closed and confidential process. Evaluations and opinions are provided explicitly in confidence for the purpose of determining a candidate's suitability for admission to an academic program. According to the public body, release of the information at issue here has the potential to compromise the admissions process and undermine the value of reference letters when considering an applicant's admission package. Further, it would negatively impact the completeness and frankness of evaluative information provided for admission purposes.

### ***Analysis***

[15] As noted above, there are three requirements for s. 19C(a)(ii) to apply. First, the records must contain personal information. A careful review of the 13 pages of records at issue here reveals that the records contain the personal information of the applicant including his name, opinions about academic performance and aptitude.

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<sup>4</sup> *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 C. F.31, s. 49(c.1)(ii).

<sup>5</sup> *ON Order PO-3089-F, University of Toronto (Re)*, [2012 CanLII 32951 \(ON IPC\)](#), at para. 28.

<sup>6</sup> *ON Order PO-4100, University of Toronto (Re)*, [2020 CanLII 105695 \(ON IPC\)](#), at paras. 10 and 12.

[16] Second, the material must be evaluative or opinion material. In this case, the content of each of the records consists of evaluative or opinion material.

[17] The documents were created contemporaneously with the applicant's application for admission into an academic program. There is nothing to indicate that they were created for any other purpose. This satisfies the third requirement that the documents must have been compiled solely for the purpose of determining the applicant's suitability for admission to an academic program.

### ***Exercise of discretion***

[18] The final step is to determine whether the public body properly exercised discretion when it decided to apply s. 19C(a)(ii) to the records. In *Nova Scotia Review Report 20-07*<sup>7</sup> I discussed the proper exercise of discretion and the factors a public body should take into consideration when exercising discretion. In this case, some of the key considerations would include the wording of the exemption and the interests it seeks to protect, whether the requester sought his own personal information, the relationship between the requester and any affected persons, the nature of the information and its significance or sensitivity, and the historic practice of the public body with respect to similar information.<sup>8</sup>

[19] In its representations, the public body stated that it considered the following factors in determining that it would not exercise its discretion in favour of disclosure:

- The purposes of *FOIPOP* – the public body said it recognized the principle that the applicant should have access to his own information and so it disclosed as much of the applicant's personal information responsive to his request as possible.
- The purposes of the exemption – maintaining the integrity of an academic admissions process depends on the provision, compilation and evaluation of candid and complete information about applicants based on the admissions material that has been provided.
- The nature of the information and its significance – the information is significant and sensitive to the public body and its admissions process. Disclosure could have a negative impact on the completeness and frankness of evaluative information provided for admissions purposes.
- The external reviewer was asked to provide his opinion in confidence.

[20] All of these considerations are relevant to the application of discretion under s. 19C. There is no evidence of bad faith or improper consideration on the part of the public body in exercising its discretion. No argument has been made to justify a compelling and sympathetic reason to disclose. Therefore, in my opinion, the public body properly exercised its discretion under s. 19C.

[21] I find that the public body is authorized to withhold the information at issue under s. 19C(a)(ii) of *FOIPOP*.

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<sup>7</sup> *NS Review Report 20-07, Public Prosecution Service (Re)*, [2020 NSOIPC 7 \(CanLII\)](#) at para. 50.

<sup>8</sup> These are also the factors highlighted in *ON Order PO-4100, University of Toronto (Re)*, [2020 CanLII 105695 \(ON IPC\)](#), at para. 15.

**FINDINGS & RECOMMENDATIONS:**

[22] I find that:

1. The public body is authorized to withhold the information at issue under s. 19C(a)(ii) of *FOIPOP*.

[23] I recommend that:

1. The public body continue to withhold the information at issue on pages 3, 4, 5, 6, 18, 22, 27, 31, 42, 43, 44, 45 and 46 under s. 19C(a)(ii) of *FOIPOP*.

January 7, 2022

Tricia Ralph  
Information and Privacy Commissioner for Nova Scotia