

TO: All MUNFA Members

FROM: The MUNFA Executive Committee

DATE: August 6, 2012

SUBJECT: Access to Information and Protection of Privacy Act (ATIPPA)

MUNFA recently received an inquiry concerning an Access to Information and Protection of Privacy Act (ATIPPA) request by an unsuccessful candidate for a position at Memorial University. MUNFA has obtained legal advice on the implications of such a request for Academic Staff Members (ASMs) who participate in Search Committees, Promotion and Tenure Committees or Advisory Committees. We believe that all ASMs should be aware of the implications of this Act as it affects the confidentiality of letters of reference and other documents in assessment files, including some documents provided by committee members.

MUNFA's legal advice indicates that: 1) ATIPPA provides a right for an individual to make a request for "personal information" held by a public body; the files of a Search Committee, or Promotion, Tenure or Review Committee contain such "personal information" about an applicant, including letters of reference, which are "opinions of a person about the individual."; 2) Based upon Supreme Court of Canada jurisprudence, this committee work, produced by employees in the course of fulfilling their employment duties is, for the purpose of the ATIPPA, within the control and custody of a public body (MUN); given that a senior official of MUN reasonably *should* be able to obtain a copy of the pertinent files, the file can reasonably be requested from the Committee; and, 3) Academic freedom does not insulate an ASM from the duty of an employee to comply with reasonable requests from his or her supervisor; since the request flows from an ATIPPA application, an ASM is required to comply with a Dean's request, and can be disciplined for failure to turn over the file.

In other words, a candidate before a Search, Promotion & Tenure, or Advisory Committee can request through ATIPPA to see his or her personal information contained in the files of the Committee; MUN can ask the Chair of the Committee for a copy of the file, and the Chair of the Committee must give the relevant file(s) to MUN officials upon request, or face being disciplined.

MUNFA and individual ASMs have expressed concerns regarding the confidentiality of letters of reference and other documents in assessment files. As is customary, the authors of those documents are promised confidentiality. The MUN Privacy Officer, Rosemary Thorne, has stated that she will redact information that could identify individuals and consult with assessment committee Chairs and others during the redaction process. The aim of the redaction process is to blank out text which would allow the requester to identify which persons made which remarks in the file.

Nevertheless, MUNFA remains concerned about how such requests may impact peer review process. We urge ASM committee members to consider these issues, and if necessary, alter how their committees function, rather than being deterred from participating in these essential collegial governance duties.

If you have any further questions or comments on these evolving issues, please contact the MUNFA Office at 864-8642 or munfa@mun.ca.