



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2018-024

October 1, 2018

Memorial University

Summary:

Memorial University (“MUN”) received an access request for records pertaining to the hiring of a term appointment with the Department of Sociology. MUN provided the Applicant with records but redacted some information citing section 40 (disclosure harmful to personal privacy) of the *ATIPPA, 2015*. MUN advised that there were no records regarding the establishment of the search committee. The Applicant questioned the redactions and claimed that further records should exist that were not provided. The Commissioner determined that MUN conducted a reasonable search for responsive records, fulfilling its duty to assist under section 13 of the *ATIPPA, 2015*. The Commissioner further determined that in regards to the records provided to the Applicant, the redactions were consistent with the cited exception and recommended that MUN continue to withhold those records.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015, SNL 2015, c A-1.2](#), sections 13 and 40.

Authorities Relied On:

Newfoundland and Labrador OIPC Report [A-2018-020](#).

Other Resources:

OIPC NL [Practice Bulletin Reasonable Search](#), March 2017.

I BACKGROUND

- [1] Memorial University (“MUN”) received an access to information request seeking the following :

Documents pertaining to: i) the hiring of term appointment faculty members (academic staff members –ASMs) in the Department of Sociology for the 2018-19 academic year, including the assessment scheme, comments made on the applications and scores (assessments) they received; ii) the establishment and composition (members) of the search committee for this hiring process. I am requesting both general and personal information.

Period covered: March 1, 2018-May 18, 2018

Possible locations: Department of Sociology; Office of the Dean of the Faculty of Humanities and Social Sciences.

- [2] MUN provided records to the Applicant but withheld some information based on section 40 (disclosure harmful to personal privacy) of the *ATIPPA, 2015*. MUN advised the Applicant there were no responsive records regarding the establishment of the search committee as it was established in accordance with Article 7 of the collective agreement with the Memorial University of Newfoundland Faculty Association (“MUNFA”). MUN clarified in its response to this Office that there were no responsive records as there was no separate committee struck in the March 1 – May 18 time period, as this competition was conducted by the Departmental search committee struck earlier in Fall 2017.

- [3] The Applicant was not satisfied with MUN’s response and filed a complaint with this Office. The Complainant asserted that not all responsive records had been located and that MUN had not fulfilled its duty to assist under section 13 of the *ATIPPA, 2015* by not conducting a reasonable search for the requested records. The Complainant was also not satisfied with MUN’s application of the exception claimed.

- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the *ATIPPA, 2015*.

II PUBLIC BODY'S POSITION

- [5] During our investigation, MUN completed a second search, focused on the records the Complainant believed should exist (specific records were itemized by the Complainant for inclusion in MUN's second search). MUN completed the second search and provided a detailed analysis of each of the items identified by the Complainant. MUN answered questions posed by this Office regarding its search parameters, communication with the Complainant and any additional records that might exist.
- [6] MUN located 11 further records it considered responsive to the access request. These records were comprised mainly of acknowledgments of applications for the position.
- [7] MUN's position is that even though a small number of additional responsive records were located during the second search, its first search was reasonable. MUN's asserts that the initial search used reasonable parameters and search terms to retrieve responsive records. MUN explained that the Dean's Office receives applications from numerous departments, and the search was reasonable given the significant volume of similar correspondence they had to review. MUN explained that it inadvertently missed the emails from the Department of Sociology. MUN confirmed in the second search that no further records exist regarding the composition of the search committee.
- [8] During the investigation MUN disclosed further records to the Complainant that were initially withheld based on section 40 of the *ATIPPA, 2015*. This information consists of some information initially withheld on cover letters and academic appointment forms. MUN's position is that it properly redacted all remaining information pursuant to section 40 of the *ATIPPA, 2015*.

III COMPLAINANT'S POSITION

[9] The Complainant's position is that MUN failed to meet its duty to assist as it failed to conduct a reasonable search for records. The Complainant believes that there are omissions from the responsive records provided.

[10] The Complainant argues that even though MUN located some further records in the second search, there are still records that exist but have not been located. The Complainant provided a detailed submission outlining many issues, asserting that additional records should exist in the following categories:

- a record of confirmation or receipt of the Complainant's application for the position;
- records documenting exchanges between the administrative head and the two appointees of the search committee, which the Complainant asserted she has documented proof exist; and
- communications of the search committee as per the requirements in the Collective Agreement.

[11] The Complainant also raised an issue with inconsistencies in the records, including a lack of clarity as to whether there were either 7 or 8 applications for the position, as well as the presence of a handwritten correction on the minutes of a Departmental meeting. The Complainant raised the possibility that this correction could amount to an alteration of the document constituting an offence under section 115(e) of the *ATIPPA, 2015*.

[12] The Complainant also stated:

I wish to conclude this part of my submission by referring to MUNFA's information bulletin titled 'ATIPPA and the work of Academic Staff Members' [provided by the Complainant]. It clearly shows that records pertaining to the committee work are responsive to the access to information requests. I quote: 'an ASM must provide copies of all correspondence and/or records that are responsive to the ATIPPA request...In one case, a Search Committee was required to turn over all feedback sheets submitted by ASMs and others in response to a request for feedback on applicants being interviewed for a position, and emails sent by members of the Search Committee to one

another'. My access request was worded in such a manner that all documents pertaining to the assessment of my application and to the establishment of the 2017-18 Search Committee are responsive.

- [13] Regarding the redacted information, the Complainant believes that some information could not be withheld by MUN under section 40(1) of the *ATIPPA, 2015*.

IV DECISION

Duty to Assist

- [14] The duty to assist is outlined in section 13 of the *ATIPPA, 2015* and states:

13. (1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

(2) The applicant and the head of the public body shall communicate with one another under this Part through the coordinator.

- [15] Many previous reports address the duty to assist, including Report A-2018-020. The duty to assist requires that public bodies make every reasonable effort to assist an applicant in making a request and provide timely responses to an applicant in an open, accurate and complete manner.

- [16] Report A-2018-020 states the position of this Office with regard to the duty to assist:

[8] It is a long held position of this Office that the duty to assist has three components, as outlined in Report A-2009-011:

[80] ...First, the public body must assist an applicant in the early stages of making a request. Second, it must conduct a reasonable search for the requested records. Third, it must respond to the applicant in an open, accurate and complete manner.

The standard for assessing a public body's efforts is reasonableness, not perfection.

- [17] Our Practice Bulletin on *Reasonable Search*, outlines that a reasonable search is one conducted by knowledgeable staff in locations where the records in question might reasonably be located.
- [18] The Complainant raised issues with the completeness of the search and alleges that there are more records responsive to the access request that MUN did not locate.
- [19] MUN provided the search parameters to this Office regarding the initial search. MUN also advised that it contacted the Head of Sociology and the Dean of Humanities and Social Sciences and that there were discussions and correspondences regarding the scope of the search to ensure that all responsive records would be located.
- [20] In the second search, MUN contacted the Dean's Office, the Office of the Head of Sociology, the two Sociology Heads (past and current) themselves and the members of the hiring committee. As noted earlier, the second search yielded 11 further records.
- [21] MUN addressed each of the itemized records that the Complainant asserts should exist and provided our Office with a detailed response, including its efforts to search for such records. Some of the records that the Complainant believes should exist would not be responsive to the access request due to the timeframe listed or the topic. For example, the Departmental minute disclosed to the Applicant was not responsive as it was outside of the timeframe provided by the Applicant in the request. Similarly, a record regarding the call for the Departmental meeting is not responsive as it is outside the timeframe of the request. Additionally, any records relating to the establishment and operation of a committee to revise the hiring process (rather than this particular recruitment) would not be responsive as the access request was specifically for records relating to the term appointment position.
- [22] Regarding confirmation of the Complainant's application, MUN confirmed that there were 3 applications submitted in person, including the Complainant's and therefore no acknowledgment email exists for those applications. MUN has now disclosed the other acknowledgment emails that were located for other applications. Regarding the inconsistency of the 7 versus 8 applications referenced in the records, MUN confirmed that

it received 7 applications in total for the term appointment with the Department of Sociology. MUN advised that there is a reference to 8 applications in the records, however, they believe that it is a typo or a mix up as the term appointment was for 8 months. During the second search, the Dean's Office also confirmed that there were 7 applications for the Sociology term appointment received.

[23] Regarding the records the Complainant believes should exist with respect to the communications of the Search Committee, MUN confirmed that no further records exist. In one instance, MUN confirmed that there was no separate committee struck within the timeframe specified in the access request to conduct the hire. In other instances, MUN followed up with individuals and determined that there was a verbal confirmation of attendance at a meeting and that there is no record regarding an appearance of a named individual via teleconference as instead the named individual attended via telephone. MUN also followed up on any further information regarding the applicants' seniority. When initially asked if the Search Committee members provided all responsive records, the Head of the Department of Sociology advised, "Yes, the section of the collective agreement is the only thing used to assess the hires, and they met in person to discuss, and had their minutes, but other than that, just back and forth they provided to set up the meeting." During the second search the Department of Sociology again confirmed that the meeting of April 10, 2018 took the form of a discussion and that there are no other records that assessed the applications other than the minutes previously disclosed.

[24] Based on the parameters of the initial search and as well as the detailed second search, I find that MUN conducted a reasonable search even though further records were found. MUN has addressed the Complainant's list of records that she believes should exist, with reasonable explanations based on discussions and communication with the individuals expected to have any responsive records. The Complainant argues that the Collective Agreement dictates that certain records should support the hiring process. Whether MUN should have created the records the Complainant is searching for is a matter of administration within MUN.

[25] A search does not have to locate every record possible in order to be reasonable. As stated above, the assessment standard is one of reasonableness, not perfection.

Section 40

[26] MUN withheld records based on section 40(1) of the *ATIPPA, 2015*:

40. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

[27] MUN applied section 40(1) to personal information of other candidates, including their names, education and work history. MUN also applied section 40(1) to personal comments made by a faculty member as well as the personal information of the other candidates for the position.

[28] During the investigation with this Office, MUN disclosed some information that it initially redacted under section 40. This information, which did not identify the applicants, was with respect to information on cover letters and information on academic appointment forms.

[29] I am satisfied that all remaining information redacted pursuant to section 40 of the *ATIPPA, 2015* is properly withheld.

[30] The Complainant raised a concern of a possible alteration on a departmental minute of April 2017 due to the handwritten correction changing the date from April 13, 2017 to April 27, 2017. However, this record is not responsive because it is outside the timeframe specified in the Applicant's request. While outside the scope of this Report, in the absence of evidence giving rise to a reasonable suspicion of misconduct, the Applicant's mere assertions of deliberate violations of the *ATIPPA, 2015* do not warrant any additional investigation.

V CONCLUSIONS

[31] I find that MUN fulfilled its duty to assist under section 13 of the *ATIPPA, 2015*. MUN conducted a reasonable search for records even though additional records were located in the second search.

[32] MUN properly applied section 40 to the remaining records it withheld.

VI RECOMMENDATIONS

[33] Under the authority of section 47 of the *ATIPPA, 2015*, I recommend that MUN continue to withhold the remaining information redacted based on section 40 of the *ATIPPA, 2015*.

[34] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of MUN 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 (in this case the Complainant) within 10 business days of receiving this Report.

[35] Please note that within 10 business days of receiving the decision of MUN under section 49, the Complainant may appeal that decision to the Supreme Court of Newfoundland and Labrador in accordance with section 54 of the *ATIPPA, 2015*.

[36] Dated at St. John's, in the Province of Newfoundland and Labrador, this 1st day of October, 2018.

Donovan Molloy, Q.C.
Information and Privacy Commissioner
Newfoundland and Labrador