



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2019-023

August 29, 2019

### Memorial University

#### Summary:

An Applicant made a request to Memorial University (“Memorial”) for records pertaining to the establishment and operation of the Humanities and Social Sciences Graduate Student Scholarships and Awards Committee and included an itemized list of documents to which he was seeking access. The Applicant also provided a date range for his request. Memorial provided the Applicant with records but withheld some information pursuant to section 40(1) (disclosure harmful to personal privacy). Memorial advised the Applicant that there was no formal procedure for nominating Committee members, nor were there records responsive to the portion of the request concerning Committee members with a conflict of interest. The Applicant requested this Office review the redactions under section 40 and claimed that Memorial failed in its duty to assist him by not conducting a reasonable search. The Commissioner determined that Memorial had conducted a reasonable search for records. Further, he found that the exceptions pursuant to section 40 were properly applied.

#### 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-2018-024](#)

## I BACKGROUND

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

*Records pertaining to the establishment and operation of the HSS Graduate Student Scholarships and Awards Committee for the 2018/2019 academic year:*

- *the committee membership;*
- *procedure for nominating the committee members and related documents;*
- *the number of applicants submitted to the SITA Doctoral Completion Award in the 2018/19 academic year (in total and from particular departments);*
- *the number of receivers of the SITA Doctoral Completion Award for the 2018/19 academic year (with their names and home departments);*
- *selection criteria and assessment scheme used by the committee;*
- *the list of the committee members and/or members of the administration who declared a conflict of interest with respect to specific applications.*

*Possible location: the HSS Dean’s Office. Period covered: September 01, 2018 – April 05, 2019*

- [2] Memorial released records to the Applicant but withheld some information pursuant to section 40 (disclosure harmful to personal privacy) of the *ATIPPA, 2015*. In relation to the part of the request which requested the procedure for nominating the Committee members and related documents, Memorial advised the Applicant in its final response to his request that there was no formal procedure for nominating the Committee members, but rather that a letter was sent out in May 2018 seeking volunteers. Memorial also advised that no conflict of interest was declared concerning applications; therefore, there were no records responsive to this particular item in the request.

- [3] The Applicant was not satisfied with Memorial’s response and filed a complaint with this Office. The Complainant stated that he believed there were further records responsive to his request that Memorial had not located or included. The Complainant asserted that Memorial had not fulfilled its duty to assist under section 13 of the *ATIPPA, 2015* by not assisting him in the early stages of making a request and not conducting a reasonable search for records. The Complainant also took issue with Memorial’s application of section 40 of the *ATIPPA, 2015* to one of the records.

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

## II COMPLAINANT'S POSITION

- [5] The Complainant states that Memorial failed in its duty to assist him pursuant to section 13 of the *ATIPPA, 2015* by failing to conduct a reasonable search for records. The Complainant states that Memorial did not locate or release records related to the establishment and operation of the 2018-2019 HSS Graduate Student Scholarship and Awards Committee. The Complainant is also of the opinion that Memorial “unilaterally redefined” the request in the search for records.
- [6] The Complainant states that he has a reasonable suspicion that other records exist in relation to the request. Specifically, the Complainant alleges that Memorial did not locate or release the call for volunteers to serve on the Committee nor the responses to the call for volunteers. The Complainant states that his request for access to the “procedure for nominating the Committee members and related documents” covers the call for volunteers and the responses.
- [7] The Complainant also states that one of the records mentions the appointment of the chair of the Committee; however, no information related to the selection and appointment of the chair were included in the records released to the Complainant. The Complainant argues that all exchanges related to the selection and appointment of the chair are responsive to the request.
- [8] The Complainant argues that Memorial improperly applied section 40 of the *ATIPPA, 2015* to the records on one page in particular. The Complainant believes “the context of the exchange excludes that personal privacy could be at stake”, and therefore, he believes the information should be released in full.

[9] Additionally, the Complainant wishes to consult the records in “their native format”, which the Complainant advises is the .eml format, as he contends that conversion to other formats may result in the loss of information.

### III PUBLIC BODY’S POSITION

[10] Memorial’s position is that the Complainant’s request was not for all the records related to the preparation and operation of the Committee, but rather a specific list of documents as outlined in the request. Memorial states that it was unable to provide records for items in the Complainant’s request as these records do not exist. Specifically, there is no official procedure for nominating Committee members, which was explained to the Complainant in the final response. Further, no records relating to “the list of the committee members and/or members of the administration who declared a conflict of interest with respect to specific applications” were found as no Committee members or administration members declared a conflict of interest in relation to the applications.

[11] Memorial states that the Complainant provided a specific time period for the request and records outside of the time period were not included in its final response.

### IV DECISION

#### Duty to Assist

[12] Previous reports from this Office have considered a public body’s duty to assist, including Report A-2018-024:

[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.*

[13] The Complainant raised the issue of the reasonableness of the search and alleged that the records released by Memorial indicate that more responsive records exist than were provided. Memorial advised that searches for records were conducted by the Associate Dean of Humanities and Social Sciences (Curriculum and Programs) in the HSS Dean's Office, and by the Chair of the HSS Graduate Student Scholarship and Awards Committee. Memorial consulted with the Chair and the Associate Dean on the request and the responsive records.

[14] Regarding the Committee membership, Memorial advised that an email was sent from the HSS Associate Dean to the Committee Chair confirming the membership of the Committee. Memorial states that the email provided is the only one which provides a full list of Committee members and that other emails located did not specifically address membership.

[15] The Complainant sought access to the procedure for nominating the Committee members and related documents. Memorial advised that no documented procedure for nominating Committee members exists. Rather, a call for volunteers to serve on the Committee was sent

out in May 2018 and, subsequently, responses to the call were received by the Dean's Office. The Complainant states that he did not receive a copy of the May 2018 letter, nor any of the responses to the call in the package of records from Memorial. He states that "the wording of the ATIPP request leaves little doubt that relevant documents, the alleged May 2018 call for volunteers and responses to this call, are responsive to it."

[16] However, Memorial notes that the Complainant's request stated that he was looking for records between September 1, 2018 and April 5, 2019. Memorial advised that the May 2018 call for volunteers fell outside of the timeframe specified by the Complainant. The call and the responses to the call were not considered responsive to the request because they did not fall within the timeframe of the Complainant's request. In providing a final response to the Complainant, Memorial specified to the Complainant which items on the list did not produce any results, providing explanations where possible about why there were no records. It is Memorial's position that in responding to the access request in this way, it fulfilled its duty to assist.

[17] The Complainant argues that if records were located and deemed to be potentially responsive, but fell outside of the timeframe of the request, the Public Body ought to have contacted him seeking further clarification. He states that had he known of or received a copy of the May 2018 call for volunteers, he would have expanded the timeframe of the request. As this did not occur, the Complainant submits Memorial did not assist in the early stages of making the request.

[18] The Complainant's request set out an itemized list of records which he was seeking. The request included a suggestion of where these records might be kept, as well as the period of time the Complainant wished for Memorial to conduct the search. We find that Memorial conducted a reasonable search for records, given the scope of the Complainant's request. We note, as previous reports have done, that reasonable searches are not required to meet a standard of perfection. Regarding the May 2018 call for volunteers, even though the record was clearly within the scope of the subject matter of the request, Memorial had no cause to question the date range provided as, according to their records, the Applicant had received this email as a member of faculty before he decided on the date range to be requested.

Memorial therefore reasonably assumed that the Applicant's date range was meant to capture other records which might exist.

[19] Regarding the Complainant's request for this record in an .eml format, the record in question was not within the scope of his request because it fell outside of the specified date range, and during the request process the Complainant did not specify that he wished to receive it in a different format from the other records. Therefore, the format within which the record exists is not a matter that is necessary to be decided in this Report.

[20] The Complainant further alleges records relating to the appointment of the Chair of the HSS Graduate Student Scholarship and Awards Committee were not located or released. The Complainant states that an email between the Chair and the Associate Dean contains the phrase "you know this, of course", which the Complainant says, in the context of the email, is an inference that the Chair was appointed, as opposed to being elected. Therefore, the Complainant asserts there must be correspondence between the Chair and the Associate Dean regarding the appointment of the position. He submits that all exchanges relating to the selection and appointment of the chair are responsive to the request, as they are documents related to the procedure for nominating Committee members. Therefore, the Complainant believes other responsive records exist but were not provided.

[21] The reference "you know this of course" is insufficient evidence that another record exists documenting the appointment of the chair.

#### **Section 40**

[22] The Complainant has requested the information withheld under section 40 of the *ATIPPA, 2015* be reviewed. Section 40 states:

*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.*

[23] The Complainant contends because the information is in an email relating to Committee matters that the disclosure harmful to personal privacy exception is inappropriate, as personal privacy is not at stake.

[24] Even if a record is created in the conduct of business matters, personal information may sometimes be contained within that record. The personal information exception to disclosure must always be considered by public bodies and applied where appropriate.

[25] We have reviewed the information and find it is appropriately withheld pursuant to the exception in section 40. This information includes names of scholarship candidates, their supervisors, the Department in which they are enrolled, and signatures.

## V CONCLUSION

[26] This Office finds that Memorial conducted a reasonable search for records given the parameters of the search set out by the Complainant. This conclusion is arrived at in light of the fact that the Complainant is a faculty member who could reasonably be expected to have made an informed choice in setting the particular date parameters on his request, particularly given that there was evidence to indicate that the Complainant should have been aware of records falling outside of that date, which again would support Memorial's position that his date range was a deliberate choice to exclude other records from his request.

[27] This Office finds that Memorial properly applied section 40 to the records.

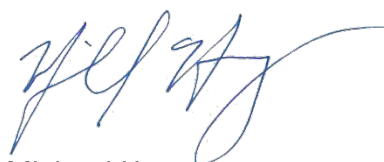
## VI RECOMMENDATIONS

[28] Under the authority of section 47 of the *ATIPPA, 2015*, I recommend that Memorial continue to withhold the redacted information pursuant to section 40 of the *ATIPPA, 2015*.

[29] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of Memorial University 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.



[30] Dated at St. John's, in the Province of Newfoundland and Labrador, this 29<sup>th</sup> day of August 2019.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador