



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2019-028

November 1, 2019

Memorial University

**Corrected Report
(Re-Issued December 12, 2019)**

Summary:

An Applicant made a request to Memorial University (“Memorial”) for records relating to any complaints, investigations or assessments about him. Memorial provided records but the Applicant alleged that further responsive records should exist and provided this Office with examples of records that should have been in the custody or control of Memorial and a list of several topics on which he believed he should have received records. The Commissioner determined that Memorial had conducted a reasonable search for records.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), S.N.L. 2015, c. A-1.2, section 13.

Authorities Relied On:

NL OIPC Report [A-2018-024](#).

I BACKGROUND

[1] The Applicant made an access to information request to Memorial University (“Memorial”) as follows:

“Any and all personal documents whatsoever, whether they are filed in the related case file or otherwise in the MUN’s custody or control, and should include all documents which refer to

- 1. Information, testimony, evidence, or submissions provided by witnesses or any person appearing on behalf of MUN*
- 2. Any assessment of me, my competence, reputation, performance, political views, or any alleged involvement in improper activities, regardless of the nature of the document and how it is filed; and*
- 3. Anything else added to the file by MUN Staff and/or respondents, along with any documents whatsoever referring in any manner whatsoever to my case but which were not formally put in the case file.”*

[2] The request was a revision of a previous request that had sought all records in the custody or control of Memorial that mentioned the Applicant’s name. Memorial had previously advised the Applicant that the earlier request was very broad and would involve an estimated search time of approximately 60 hours. Memorial also indicated that there would be a fee for such a request and provided an estimate. The initial request was withdrawn and the above request submitted in an effort to narrow the scope of the access request.

[3] Memorial interpreted the Applicant’s new request as a request for records which contained the Applicant’s personal information. The request was forwarded to various offices and departments within Memorial which may have had possession of the Applicant’s personnel records or any records related to complaints or discipline.

[4] Following Memorial’s search for records, 781 pages of records were provided to the Applicant. These records were subject to various redactions pursuant to sections 29, 30 and 40 of ATIPPA, 2015.

- [5] The Complainant filed a complaint with this Office objecting to the redactions applied by Memorial and alleging that Memorial had failed to conduct a reasonable search. In support of the latter aspect of the complaint, the Complainant provided this Office with a list of fifteen topics on which the Complainant believed Memorial should have provided records.
- [6] Following a review of the records provided to the Complainant, this Office made several informal recommendations to remove redactions from some records. Memorial followed these recommendations and additional information was provided to the Complainant. While this resolved the complaint regarding the redactions, the Complainant remained dissatisfied with the overall scope of the responsive records and believed that not all records had been provided. Later in the investigation process, the Complainant provided this Office with two records which were in his possession but did not appear within the responsive records.
- [7] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

II PUBLIC BODY'S POSITION

- [8] On receipt of the Complainant's original, broader, request, Memorial's Office of Faculty Relations and Department of Human Resources were consulted and records searched. Once the scope of the request was narrowed by the Complainant, Memorial reviewed the Complainant's new request and, based on his references to "case file", "testimony", "evidence of submissions" and "assessment of [the Complainant's] . . . competence, reputation, performance, political views [or] improper activities" made a search for records containing the Complainant's personal information. Based on consultations with the Office of Faculty Relations and Department of Human Resources, Memorial identified several offices and departments that would have responsive records:
- a. *The Office of the President*
 - b. *The Office of the Provost and Vice-President (Academic)*
 - c. *The Office of the General Counsel*
 - d. *The Sexual Harassment Office*
 - e. *The Faculty of Engineering and Applied Sciences*

[9] The request was then circulated to staff within the above offices and departments and a search was conducted by knowledgeable staff.

III COMPLAINANT'S POSITION

[10] As noted above, the Complainant provided this Office with a list of fifteen topics which he believed had not been adequately covered by Memorial's search. Later in the course of our investigation, the Complainant raised several further topics and sought additional records including records relating to his graduate students where his name appeared; student complaints related to courses offered; all correspondence between the Complainant and the Dean of Engineering and Applied Sciences; and documents related to a university in India.

[11] The Complainant also provided documents in his possession which were not amongst the responsive records provided by Memorial and which he believes should have been included. These records include:

- a. *A Change of Program form from the School of Graduate Studies noting the removal of the Complainant as the supervisor for one of his students;*
- b. *A 2016 email addressed to the Manager of International Programs within the Faculty of Engineering and Applied Sciences voicing several complaints about the Complainant's teaching;*

V DECISION

[12] Section 13 of *ATIPPA, 2015* imposes on public bodies a duty to assist applicants in the course of making an access request. This duty includes an obligation on public bodies to conduct a reasonable search. 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] As noted above, the standard – and therefore the question before this Office – is whether Memorial conducted a reasonable search. Perfection is not required. This includes questions about Memorial's interpretation of the scope of the request and how the search was conducted.

[14] The Complainant's access request clearly indicated that he was seeking records about him, in particular, complaints or assessments about him. Memorial's decision to limit its search to human resources records and records pertaining to complaints or assessments was therefore reasonable.

[15] In terms of how the search was conducted, Memorial has documented its efforts to locate records responsive to the Complainant's request and identified who conducted the search and the time spent on search efforts. For several of the offices and departments involved in this request, multiple staff were involved in searching records. Memorial has indicated that a total of 14.5 hours of staff time was spent searching for records in response to this request.

[16] Having reviewed the records provided to the Complainant, it is apparent that he has received records related to 14 of the 15 topics that he raises in his complaint. The only issue that returned no responsive records was related to an application for a privately-endowed research chair. Memorial advises that a faculty member's human resources file would normally contain such records but that none were found. No reference to the research chair were found in other locations either.

[17] As to the documents presented by the Complainant, we conclude that the 2016 email is a record that was responsive to the request, as it is a complaint about the Complainant's teaching. However, Memorial has advised that any investigation into a faculty member's teaching would have been conducted with the involvement of the Dean. The Dean of Engineering and Applied Science's records were searched and no further records related to that particular complaint were located.

[18] Finally, as to the new topics raised by the Complainant during our investigation, in our view they do not relate to the scope of the original request. The Dean of Engineering and Applied Science's records had already been searched and responsive records provided – the original request did not specify all correspondence between the Complainant and the Dean. The inclusion of all records about the Complainant's graduate students – absent a connection to a complaint or assessment about the Complainant – are beyond what the Complainant originally sought. As noted above regarding the 2016 email, any other complaints about the Complainant's teaching or course offerings would have been addressed by the Office of the Dean and we are satisfied that that Office was properly searched. Finally, the Complainant provided no context regarding the university in India or evidence that records relating to this institution were in some way connected to the subject matter of his request.

[19] It is important to note that this request was the result of efforts by the Complainant and Memorial to narrow an earlier search that sought all records mentioning the Complainant. We have concluded that Memorial interpreted the request reasonably and in good faith. It stands to reason then that there will be records in the custody or control of Memorial relating to the Complainant which would not have been included within the scope of this request. Our findings that Memorial has conducted a reasonable search and has met its duty to assist the

Complainant does not, however, preclude the Complainant from making a further request specifying the topics that were not included in the present request.

VI CONCLUSIONS

[20] This Office finds that Memorial conducted a reasonable search for records given the parameters of the search set out by the Complainant.

[21] This Office finds that Memorial properly applied redactions, including sections 29, 30 and 40 to the records.

VII RECOMMENDATIONS

[22] Under the authority of section 47 of *ATIPPA, 2015*, I find that Memorial has conducted a reasonable search for records. Therefore, I recommend that Memorial maintain its position regarding this matter.

[23] As set out in section 49(1)(b) of *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.

[24] Dated at St. John's, in the Province of Newfoundland and Labrador, this 1st day of November 2019.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador

APPENDIX

Correction made on December 12, 2019:

1. Section VII Heading on page 7 should read RECOMMENDATIONS not CONCLUSIONS.