



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2020-006

May 26, 2020

Memorial University

Summary:

The Complainant, a Memorial employee, suspected that some person had accessed sensitive personal files. The files were stored locally on a Memorial computer assigned to the Complainant and had been temporarily migrated to another drive on Memorial's network. The Complainant filed an access request for the logs of accesses to those files for a particular day. Memorial reviewed the request with its own Information Technology (IT) staff, and with the external consultant that had installed the servers, and responded to the Complainant that because file access is not logged on those servers, the requested records do not exist. The Commissioner was satisfied that file-level access logging had never been enabled on the relevant systems, and that consequently no responsive records exist. The Commissioner concluded that Memorial had fulfilled its duty under section 13 of *ATIPPA, 2015* by conducting a reasonable search for records and responding accurately and completely to the Complainant.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#),
S.N.L. 2015, c. A-1.2, sections 13, 115.

Authorities Relied On:

NL OIPC Reports [A-2019-023](#), [A-2018-024](#).
OIPC Practice Bulletin – [Reasonable Search](#).

I BACKGROUND

[1] In September 2019, during an upgrade process, the files stored on the Complainant's office computer, a Memorial University ("Memorial") asset assigned to the Complainant, were moved temporarily to a drive on another server at Memorial University. The Complainant became suspicious that someone may have accessed sensitive personal files which had stored on that computer. The Complainant filed an access request under the *Access to Information and Protection of Privacy Act, 2015* ("ATIPPA, 2015" or "the Act") as follows:

1. *The logs of accesses to the files migrated from the hard drive of the [device name] to the P: drive from the IP addresses of all ITS staff members with administrator privileges. Source: the Microsoft domain controller*
2. *The logs of accesses to the files migrated from the hard drive of the [device name] to the P: drive. Source: the Audit journal*
3. *The logs of file changes pertaining to the files migrated from the hard drive of the [device name] to the P: drive. Source: the Linux file server.*

[2] Upon receipt of the access request, and after clarification of some details of the request with the Complainant, the Memorial Information Access and Privacy Office ("IAP Office") forwarded the request to the University's Chief Information Officer and Director of Information Services Technology, who responded that file-level access is not recorded.

[3] Memorial responded accordingly to the Complainant, advising that there were no records responsive to the request. The Complainant was not satisfied with the response, and filed a complaint with this Office, alleging that Memorial had failed to conduct a reasonable search for the records.

[4] 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

- [5] Memorial described the steps taken to locate responsive records, including the scope of the search, all possible locations where relevant records might be found, and the training and experience of the persons who conducted the search.
- [6] The Memorial IAP Office normally does not conduct access request searches itself, but sends the request to appropriate individuals in the relevant work unit. In this case the search for responsive records was conducted by consulting with the technology experts who have the necessary knowledge of how the system operates. In particular, the IAP Office sent the request to its Chief Information Officer. After consultation with the IAP Office, that individual assigned the task of searching for records to the appropriate IT team. That team in turn contacted the Senior Consultant of the organization that had been contracted to install and maintain the enterprise file sharing system involved.
- [7] The Consultant was able to immediately confirm that although the system was technically capable of logging accesses to files at the file level, that option had never been enabled on the Memorial system. Therefore the requested records did not exist.
- [8] Memorial's position is that it concluded, on the basis of expert advice, that no responsive records exist. Therefore it has fulfilled its duty to conduct a reasonable search.

III COMPLAINANT'S POSITION

- [9] The Complainant argues that Memorial failed to conduct a reasonable search for records, stating that information on the Microsoft website refutes the claim that file access is not logged.
- [10] The Complainant argues that the claim that file access is not logged on the Linux server needs to be verified by an independent IT expert.

[11] The Complainant argues that Memorial's Information Management policy considers access logs as official university records, and therefore Memorial has a duty to retain such records and provide them on request.

[12] Similarly, the Complainant states that if the records were created, and subsequently destroyed, then it is important to ask whether they were destroyed in contravention of *ATIPPA, 2015*.

IV DECISION

[13] A public body's duty to conduct a reasonable search for records responsive to an access request is found in section 13 of *ATIPPA, 2015*, the relevant portion of which reads as follows:

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.

[14] This Office has elaborated on the content of this provision in a number of previous Reports, as summarized in the following excerpt from Report A-2019-023:

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

[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.*

[15] I accept Memorial's explanation that the access logs were not created and that therefore the records do not exist.

[16] The MUN IAP Office relied on the expertise of technical staff in reaching the conclusion that no responsive records exist. I find that this was appropriate.

[17] Because the requested records were never created, it follows that other normally relevant questions, such as the scope of the search, identification of all possible locations where records might be found, or whether records were retained or destroyed, are not pertinent to this investigation.

[18] The Complainant has requested that this Office engage an independent expert to conduct a search of Memorial's computer system for the requested records. There is no evidence before me to suggest that Memorial ought to have conducted the search in any other way. There is also no evidence that the result of the search, and the conclusion reached, are wrong. I am therefore satisfied to rely on the conclusions reached by Memorial.

[19] An additional argument made by the Complainant is that Memorial's Information Management Policy considers records such as access logs to be official university records, and therefore Memorial has a duty to retain them and provide them on request. Regardless of any policy created by Memorial, which this Office has no jurisdiction to enforce, there can be no duty to retain records if those records have never been created. For the same reason, there can be no violation of the provision, in section 115 of *ATIPPA, 2015*, that establishes

an offence where a person willfully destroys or conceals records with the intent to evade an access request, since the records were never created.

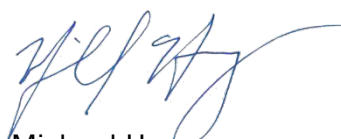
[20] In conclusion, I am satisfied that file-level access logging has never been enabled on the relevant system, and therefore no records exist that are responsive to the Complainant's request.

V RECOMMENDATIONS

[21] Under the authority of section 47 of *ATIPPA, 2015*, I find that Memorial has conducted a reasonable search for records and responded to the Complainant appropriately under section 13 of *ATIPPA, 2015*. Therefore, I recommend that Memorial maintain its position regarding these matters.

[22] 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.

[23] Dated at St. John's, in the Province of Newfoundland and Labrador, this 26th day of May, 2020.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador