



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

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NEWFOUNDLAND AND LABRADOR

**Report A-2021-001**

**January 12, 2021**

**Memorial University**

**Summary:**

The Complainant, a Memorial University employee, received a disciplinary suspension from the University. The Complainant's pay was suspended prior to the grievance process, an action contrary to the Complainant's collective agreement. The Complainant filed an access request for records relating to the matter. Upon receiving records, the Complainant suspected that the University was either withholding records or had not conducted a reasonable search and filed a complaint with this Office. Memorial described its search and the Commissioner concluded that Memorial had fulfilled its duty under Section 13 of *ATIPPA, 2015* by conducting 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 Reports [A-2009-011](#) and [A-2019-023](#)

**Other Resources:**

[OIPC Practice Bulletin – Reasonable Search](#)

## I BACKGROUND

- [1] In March 2020, the Complainant received a disciplinary suspension from his position at Memorial University (“Memorial”). The Complainant’s pay was suspended prior to the grievance process, in contravention of a collective agreement. This error was corrected after the Complainant brought it to the attention of Memorial. The Complainant filed an access request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or “the Act”) as follows:

*Written communications between Office of Faculty Relations and Department of Human Resources, including Payroll, in which the requester’s personal information (complainant included identifying keywords to be searched) is mentioned.*

*Period covered: March 18- September 9, 2020*

*Possible location: the Office of Faculty Relations*

- [2] Memorial responded and indicated it was providing full disclosure, constituting ten pages of unredacted records. Upon review of the records, the Complainant suspected Memorial was either withholding, or had not located, records related to the request. The Complainant then filed a complaint with this Office. The Complainant’s allegation primarily rests on wording included in correspondence from the Director of Human Resources to the Complainant, stating:

*It seems there was a misunderstanding with written communications between Faculty Relations and Payroll. I apologize for this misunderstanding and we will rectify this as soon as possible*

- [3] The Complainant correctly notes that no record of this nature (that is, a written communication which could have been the source of the misunderstanding) exists in the records provided to him.

- [4] The Complainant also references an excerpt of correspondence where the Director of Faculty Relations states “since my arrival this is only the second suspension involving a faculty member”. The Complainant notes that this is untrue, having himself been suspended on two previous occasions, both with the involvement of the Director of Faculty Relations. The Complainant presents this to advance a narrative that Memorial is not being truthful with respect to these circumstances.

- [5] In response to the complaint, Memorial provided details of its search and indicates that the “misunderstanding in written communication” refers to an error of omission, suggesting a statement regarding the timing or procedure for suspending pay was erroneously excluded from the original disciplinary letter sent by the Office of the Provost.
- [6] In response, the Complainant provided copies of previous letters of suspension, pointing out that none of those letters include such a statement. Again, the Complainant presents this as a component of his narrative that the University is being less than honest and, by extension, asserts that other records exist and may have been purposefully withheld.
- [7] Memorial does not provide further explanation as to why pay was suspended, other than that it was likely an administrative error. It attributes the statements and other inconsistencies raised by the Complainant as simple errors or unfortunate phrasing.
- [8] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## II APPLICANT’S POSITION

- [9] The Complainant argues that Memorial failed to perform a reasonable search or was withholding records. The Complainant bases this claim on wording in correspondence between himself and Memorial which he suggests indicates the existence of additional records which have not been provided. He also highlights inconsistencies and factual errors to build a narrative that Memorial is not being truthful with respect to this issue.

## III PUBLIC BODY’S POSITION

- [10] In addressing reasonableness of search, Memorial indicates that searches took place within the Office of Faculty Relations and the Department of Human Resources. Memorial further indicates that e-mail was the only confirmed mode of communication between these offices on this matter, and the e-mails of all relevant officials were searched.

[11] Memorial detailed the steps taken to locate all possible repositories of records for each individual involved in searching, noted each individual involved in the search, the locations (e-mail accounts and shared directories) searched, as well as descriptions of the amount of time spent by each individual searching.

[12] Memorial insists that there are no other records which are responsive to this request.

#### 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 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.*

[15] For a more recent Report summarizing the duty to assist and reasonable search, see Report A-2019-023.

[16] Our Practice Bulletin on Reasonable Searches outlines that a reasonable search is one conducted by knowledgeable staff in locations where the records in question might reasonably be located. The standard for assessing a public body's efforts is "reasonableness", not perfection.

[17] The Complainant's submissions raise the potential that other records related to his suspension exist, and a review of the wording of the request suggests that additional records may exist but which fall outside the scope of the request. For example, the initial letter of discipline was not responsive to the request as it was not correspondence between the Office

of Faculty Relations and the Department of Human Resources, but between the Office of the Provost and Vice-President (Academic) and the Department of Human Resources. The Complainant did not raise the non-provision of this letter as an issue.

[18] In other circumstances, the duty to assist may obligate an ATIPP Coordinator to seek out records which may exist but are outside of the scope of a request. However, the Complainant has an advanced understanding of the request process and the University's administrative structure. There would be no reason for the ATIPP Coordinator to believe they needed to guide the Complainant or do anything other than adhere to the confines of a very specific and limited request made by an individual with knowledge of the circumstances.

[19] Aside from the potential that related records were not provided as they were not responsive to the specific parameters of the request, the Complainant's position that Memorial is withholding a record or records seems to be emboldened by the fact that Memorial has not provided him or this Office with a clear explanation as to why his pay was erroneously suspended. He has interpreted inconsistencies in the offered explanations, and several factually incorrect statements, as evidence that the Public Body is not only withholding records but has intentionally provided false statements to our Office. The Complainant's arguments in this respect are not compelling. The issues he references are not factors which would affect the reasonableness of a search, nor are they, in any way, indicative of an attempt to improperly withhold records or mislead this Office, as the Complainant has suggested.

[20] In summary, the only issue before me is whether Memorial conducted a reasonable search. Memorial has provided a description of the business areas and record types searched, identified knowledgeable officials who searched, provided details such as time spent searching, locations (databases and accounts) searched, and therefore I am satisfied that a reasonable search was conducted.

## 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 11<sup>th</sup> day of January, 2021.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador