



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**A-2021-034**

**August 11, 2021**

**Memorial University**

**Summary:**

The Complainant submitted a request to Memorial University under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”) seeking access to a number of records. The University granted partial access with redactions made under section 29(1)(a) (policy advice or recommendation), section 31 (harmful to law enforcement), and section 40 (harmful to personal privacy). The Complainant objected to these redactions and also alleged that the University did not meet its section 13 duty to assist. During informal resolution efforts, the University agreed to release some of the information withheld under section 29 and section 40. The Commissioner concluded that the remaining exceptions had been applied properly. The Commissioner also concluded that the University had fulfilled its duty to assist the Complainant under section 13.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 29, and 31.

**Authorities Relied On:**

NL OIPC Reports [A-2009-011](#), [A-2019-023](#), and [A-2021-025](#)  
OIPC Practice Bulletin – [Reasonable Search](#)

## I BACKGROUND

[1] The Complainant made a request to Memorial University (“Memorial”) under the Access to Information and Protection of Privacy Act, 2015 (“ATIPPA, 2015” or the “Act”) for:

*1. the invitation of the SSHRC President for a virtual visit to Memorial University of Newfoundland and Labrador*

*2. the town hall meeting with his and the MUN President’s participation on February 11, 2021, as well as its outcomes*

*3. meetings or other contacts between SSHRC’s representatives and MUN’s officials (from the President’s, Provost and VP (Academic)’s, VP (Research)’s, the HSS Dean’s and Information Access and Privacy offices, the Office of Faculty Relations) from December 11, 2020 to date, as well as their outcomes*

[2] The Complainant clarified the request, stating:

*‘Outcomes’ refer to decisions taken, actions or projects agreed, documents signed or discussed, promises made by SSHRC’s representatives and MUN’s officials. It follows that the scope of the request includes notes in any form taken during those events, as well as follow up exchanges.*

*The possible location of responsive records was duly identified in the original request: the President’s, Provost and VP (Academic)’s, VP (Research)’s, the HSS Dean’s and Information Access and Privacy offices, the Office of Faculty Relations). Accordingly, the ASMs, who participated in the Town Hall meeting other than MUN’s officials are excluded from the scope of the search (their list is a responsive record though since it is likely in the custody and control of MUN’s officials).*

[3] Memorial provided the Complainant with a package of 353 pages of responsive records. Some of the information contained in these records was redacted under sections 29, 31, and 40 of the Act.

[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 provided a detailed accounting of the search undertaken to locate the requested records, including details of the search for additional records the Complainant believed should exist but were not included in the original package. Memorial believes that it has fulfilled its duty to conduct a reasonable search as required under section 13 of the Act.
- [6] During the investigation, Memorial agreed to release some of the information redacted under section 29. After doing so, there remained one record with information redacted under section 29: the Presidential Communications Outlook ("PCO"). The PCO is a management-planning tool developed by the Division of Marketing and Communications to provide confidential advice on communications to the President. It is drafted monthly and is used to help determine communication opportunities, issues to be pursued, approaches to be taken, and types of support required. As such Memorial believes that this record is subject to section 29(1)(a).
- [7] Memorial relies on the findings in Report A-2021-025 to support the redactions under section 31, which is information relating to Webex videoconferencing links and passwords. As noted in that Report, while the risk may be small, it does exist, and as such the criteria for applying section 31(1)(l) is met. Additionally, there is no other legitimate use for the redacted information.
- [8] As well, Memorial released all but one instance of information it had initially redacted under section 40. For the remaining information for which section 40 had been claimed, Memorial had also claimed that this information fell under section 31, and Memorial subsequently indicated that it would no longer be relying on section 40 with regard to this information.

## III COMPLAINANT'S POSITION

- [9] The Complainant believes that Memorial failed to fulfill its duty to assist under section 13 of the Act. In particular, the Complainant believes that additional responsive records exist that

were not provided in Memorial's response. The Complainant indicated that the following records should exist:

1. List of Participants who attended the Town Hall meeting between the SSHRC President and Memorial's President, including login and logout times
2. Transcript of the Town Hall meeting
3. Any hand written notes take by Memorial's President during the meeting with the SSHRC president on January 7
4. Agenda of the January 7 meeting,
5. Briefing notes prepared for the January 7 meeting,
6. Follow-up exchanges on the January 7 meeting, including with Memorial staff and ASMs, and
7. Entry in the Presidential Communications outlook pertaining to the January 7 meeting.

[10] With respect to the redactions under section 31, the Complainant is of the opinion that there is no potential for harm in releasing the information relating to Webex links and passwords. The Complainant relies on the fact that other universities in other jurisdictions have released similar information. The Complainant has also produced correspondence from a representative from Cisco Webex which noted that the company did not have any security concerns related to the release of that information.

#### IV ISSUES

1. Did Memorial fulfill its duties under section 13 of *ATIPPA, 2015*?
2. Do additional records exist?
3. Did Memorial appropriately apply redactions under section 29 of *ATIPPA, 2015*?
4. Did Memorial appropriately apply redactions under section 31 of *ATIPPA, 2015*?
5. Did Memorial appropriately apply redactions under section 40 of *ATIPPA, 2015*?

## V DECISION

[11] 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.*

[12] 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.*

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

[14] 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.

[15] Memorial provided a detailed accounting of how the search for records was conducted, including completing an additional search specifically for the documents that the Complainant believed should exist but were not provided. The initial search involved seven departments and 10 hours of searching, all by employees who are familiar with the records and with the ATIPP process.

[16] Each of the specific records noted by the Complainant as potentially missing from the package of records was the subject of additional searching, the result of which was no further records being located:

1. There is no participant list or login and logout information for the Town Hall meeting. Memorial has confirmed that it may have been possible to obtain such a record from the admin console used by specific employees of Memorial's Office of the Chief Information Officer for trouble shooting purposes. However, these records are only accessible for 30 days and, as such, no longer exist. The records were not intentionally created by Memorial, rather they are automatically generated in the back-end of Webex to facilitate the use of the program and are automatically deleted. The records are akin to a transitory record with no enduring value past their use in trouble shooting or managing Webex meetings. They were not located in the initial search as they are stored in an obscure location and only accessible by a limited number of people. Having reviewed the initial search and the explanation relating to these records, this would be an example of a reasonable, but not perfect search.
2. Memorial does not have a transcript of the Town hall meeting. However a recording is publically available on Memorial's website at [gazette.mun.ca/research/sshrc-recap/](http://gazette.mun.ca/research/sshrc-recap/).
3. It was confirmed that no handwritten notes exist from the January 7 meeting.
4. There was no formal agenda for the January 7 meeting. Internal/informal discussions were provided to the Complainant at pages 24-25 of the response.
5. There were no briefing notes for the January 7 meeting,
6. The Complainant was provided with all discussions relating to the meeting on pages 7-28 of the response.
7. The January 7 meeting was not included in any of the Presidential Communications Outlooks.

[17] There were two instances of redactions under section 29 of the Act. Section 29(1)(a) states:

*29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal*

*(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;*

[18] Memorial released the information during the informal stage of our investigation. The remaining redactions under section 29 are in relation to the PCO. As noted above, the PCO is a management-planning tool developed by the Division of Marketing and Communications to provide confidential advice on communications to the President. It is drafted monthly and used to help determine communication opportunities, issues to be pursued, approaches to be taken, and types of support required.

[19] As the redactions relate to confidential advice developed for the President of Memorial, it is within Memorial's discretion to withhold under section 29(1)(a).

[20] With regard to the redactions made under section 31(1)(l) this issue was considered in Report A-2021-025. That Report found that Memorial was entitled to rely on the exception and could continue to withhold the information. The Complainant provided this Office with communication with a representative from Cisco Webex noting that they did not believe there to be any security risk. He also provided the results of similar requests made to universities in other provinces, which included similar information.

[21] Section 31(1)(l) states:

*31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to*

*(l) reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system;*

[22] Given the wording of the section, the requirement is not that there is a risk of harm, only that the release of the information can reasonably be expected to reveal arrangements for the security of a computer system. The Webex links and passwords are arrangements for the security of online meetings and therefore meet the requirements for the information to be withheld. The results of similar requests in other jurisdictions is not determinative of the issue in this case as the decisions are made by different institutions, using different programs, and under different legislation. While the information from Cisco Webex provided by the

Complainant is helpful, we ultimately rely on the public body's own assessment of the security of its systems.

[23] After the second release of records there was one remaining redaction under section 40, however this information was also covered under the above analysis of section 31. As such, it is not necessary to assess the application of section 40.

[24] The Complainant also took issue with the dual role being fulfilled by the interim ATIPP Coordinator who is also Memorial's general counsel. This Office has no issue with such an arrangement and, in fact, this is not the only public body with a similar arrangement.

## VI RECOMMENDATIONS

[25] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that Memorial University continue to withhold the information redacted from the responsive records in accordance with sections 29 and 31 of the Act.

[26] 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.

[27] Dated at St. John's, in the Province of Newfoundland and Labrador, this 11<sup>th</sup> day of August 2021.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador