



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2022-028

November 24, 2022

Memorial University

Summary:

The Complainant made an access to information request to Memorial University for records related to allegations, complaints, investigations and assessments involving the Complainant at his workplace. The University provided records to the Complainant, but withheld some information pursuant to sections 29(1)(a) (policy advice or recommendations), 31(1)(l) (disclosure harmful to law enforcement) and 40(1) (disclosure harmful to personal privacy). The Complainant filed a complaint with this Office questioning if all records had been provided as well as questioning the decision to withhold some information. During the complaint investigation, the University agreed to release some additional information previously withheld pursuant to sections 29(1)(a) and 40(1) of *ATIPPA, 2015*. The Commissioner concluded that the University had conducted a reasonable search for records and that the remaining redactions were properly applied.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 29(1)(a), 31(1)(l), and 40(1).

Authorities Relied On:

NL OIPC Report [A-2021-025](#).

[College of the North Atlantic \(Re\), 2021 NLSC 120](#).

OIPC Practice Bulletin – [Reasonable Search](#).

BACKGROUND

- [1] The Complainant made an access to information request to Memorial University (“Memorial”) under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”). The Complainant requested records containing his personal information with respect to his personal or professional competency, conduct, and character, including any allegations against him, investigations, and workplace assessments. The Complainant provided particulars, including departments and individuals who may have records responsive to his access request as well as timeframes.
- [2] Memorial provided the Complainant with a response and records, withholding some information based on sections 29(1)(a) (policy advice or recommendations), 31(1)(l) (disclosure harmful to law enforcement), and 40(1) (disclosure harmful to personal privacy) of *ATIPPA, 2015*. The Complainant filed a complaint with this Office requesting a review of the search conducted by Memorial as he believed not all records were located or provided and also questioning the exceptions to access applied.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY’S POSITION

- [4] Memorial’s position is that the search conducted was reasonable and that exceptions to access were properly applied.
- [5] Memorial advised that its Information Access and Privacy (“IAP”) Office contacted relevant departments, including the specific ones outlined in the Complainant’s access request, and provided instructions to those departments outlining how to conduct a search. Some of the departments had designated employees who were experienced in conducting access to information searches and who helped facilitate the searches. Specific employees who would have responsive records were identified and records were provided to the IAP Office for review.

- [6] Memorial advised that the responsive records contained emails, attachments, handwritten notes, letters and a briefing note and that the IAP Office had no reason to believe employees had not searched all electronic storage and databases, as well as any physical repositories, for records.
- [7] Memorial's position is that the search was conducted by knowledgeable staff in locations where the records in question might reasonably be located and therefore that the search was reasonable.
- [8] Much of the information redacted was based on sections 29(1)(a) and 40(1) of *ATIPPA, 2015*. Memorial's position is that some of the information redacted under section 29(1)(a) provides advice and recommendations involving work situations, procedures and other individuals.
- [9] Memorial stated that some of the information withheld under section 40(1) contained highly sensitive personal information of third parties. Some of this personal information of third parties does not relate to the Complainant and should remain redacted and Memorial relies on section 40(4)(a) of *ATIPPA, 2015*. However, some of the personal information of third parties does involve the Complainant, and would contain his personal information as outlined under section 2(u)(ix) of *ATIPPA, 2015*. Memorial's position is that this information should remain redacted as releasing it would violate the third parties' privacy. Further, Memorial was advised by its human resources department that due to the situation and parties involved there was a risk of matters intensifying, resulting in possible harm.
- [10] During the complaint investigation, Memorial agreed to release some additional information previously withheld pursuant to sections 29(1)(a) and 40(1).
- [11] Section 31(1)(l) of *ATIPPA, 2015* was applied once with respect to a Webex link and Memorial's position is that this exception was properly applied.

COMPLAINANT'S POSITION

[12] The Complainant's position is that not all records were provided and that more exist. The Complainant provided specific examples, including records related to phone calls between himself and a named employee, records relating to a meeting of named employees, information about a grievance, and records related to interviews.

[13] The Complainant's position is that some exceptions were not properly applied. The Complainant believed there were names of individuals that were redacted that should be disclosed. The Complainant also pointed to a specific section 29(1)(a) redaction that he believed should be disclosed. Overall the Complainant wanted a review of the exceptions used by Memorial to ensure they were properly applied.

ISSUES

[14] The issues are whether Memorial properly applied sections 29(1)(a), 31(1)(l) and 40(1) to withhold information, and whether Memorial conducted a reasonable search for responsive records.

DECISION

Section 31(1)(l)

[15] Section 31(1)(l) of *ATIPPA, 2015* is as follows:

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;

[16] This exception was used by Memorial only once in relation to a Webex link. This Office has previously accepted this exception to access for this type of information (see, for example, Report A-2021-025) and we conclude it was properly applied in this instance.

Section 29

[17] Sections 29(1)(a) of *ATIPPA, 2015* is as follows:

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] Many of the redactions made under section 29(1)(a) of *ATIPPA, 2015* met the requirement of section 29 as they proposed courses of action, different procedures, and recommendations in relation to several individuals and various workplace issues. During the investigation, Memorial agreed to release more information that had initially been withheld under section 29(1)(a) of *ATIPPA, 2015*. Some information continues to be withheld pursuant to section 29 and we find that the exception to access has been properly applied to this remaining information.

Section 40

[19] The relevant subsections of section 40 of *ATIPPA, 2015* are as follows:

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.

...

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

...

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;

(b) the disclosure is likely to promote public health and safety or the protection of the environment;

(c) the personal information is relevant to a fair determination of the applicant's rights;

- (d) *the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;*
- (e) *the third party will be exposed unfairly to financial or other harm;*
- (f) *the personal information has been supplied in confidence;*
- (g) *the personal information is likely to be inaccurate or unreliable;*
- (h) *the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;*
- (i) *the personal information was originally provided to the applicant;*
and
- (j) *the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.*

[20] Given the nature of the workplace issues detailed in the responsive records, there is considerable personal information of third parties within the responsive records. Some of this personal information also contains the Complainant's own personal information as outlined under section 2(u)(ix) of *ATIPPA, 2015*, which states that personal information includes "the individual's personal views or opinions, except where they are about someone else." Memorial's position is that this information should remain redacted as releasing it would violate the third parties' privacy.

[21] Memorial explained it was advised by its human resources department that due to the situation and parties involved there was a risk of matters intensifying, resulting in possible harm. Memorial was required to consider relevant circumstances, such as those listed in section 40(5) of *ATIPPA, 2015* in deciding whether or not to withhold this information, and the advice from its human resources department appears to have been the primary factor considered, likely in light of section 40(5)(e). Memorial, did however reconsider some of its redactions and it released some further information initially withheld under section 40(1).

[22] As noted above, the Complainant's access to information request sought records related to any workplace investigation conducted in relation to him by Memorial. Section 33 of *ATIPPA, 2015* provides an individual who is the subject of a workplace investigation with a right of access to all relevant information created or gathered for the purpose of the workplace investigation. However, the Supreme Court of Newfoundland and Labrador clarified in *College of the North Atlantic (Re)* that this right of access remains subject to section 40. Following Memorial's disclosure of additional information to the Complainant, we are satisfied that the

remaining applications of section 40 to withhold third party personal information are appropriate and adequately balance the Complainant's access rights with the protection of the privacy of third party personal information.

Reasonable Search

[23] 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.

[24] This Office has commented on the requirements of a reasonable search in many previous reports and this Office has a Practice Bulletin on Reasonable Search commenting on the criteria of a reasonable search. 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.

[25] Based on Memorial's description of the departments contacted, the searches conducted by staff in those department who are knowledgeable about these types of records, the locations searched and the type of records located (both electronic and paper), I conclude that Memorial conducted a reasonable search for records.

RECOMMENDATIONS

[26] 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, 31 and 40 and whereas Memorial University conducted a reasonable search for responsive records, I recommend it take no further action regarding its search efforts for the requested information.

[27] 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.

[28] Dated at St. John's, in the Province of Newfoundland and Labrador, this 24th day of November, 2022.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador