



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

Report A-2023-050

November 30, 2023

## Memorial University of Newfoundland

### Summary:

The Complainant made an access request to Memorial University for records relating to a security risk assessment conducted by the University and records about the cost of security hardware for the University's Core Science Facility. Memorial provided records to the Complainant, though some information was redacted under section 29(1)(a), 31(1)(c), and 37(1)(b) of *ATIPPA, 2015*. The Complainant sought a review by this Office of this withheld information, while also arguing that Memorial University did not meet its duty to assist pursuant to section 13(1) of the Act. After a review of the redactions, this Office concurred with Memorial University that the information withheld should not be disclosed. This Office further held that Memorial University had met its duty to assist.

### Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13(1), 29(1)(a), 30(1)(l), 37(1)(b)

### Authorities Relied On:

NL OIPC Reports [A-2019-017](#); [A-2021-003](#); [A-2021-025](#); and [A-2023-026](#);

## BACKGROUND

[1] The Complainant submitted the following access to information request to Memorial University (Memorial):

1. *Records pertaining to the initiation of a “risk analysis using the university’s Risk Framework” referred to in the response to the ATIPP request file #015-01-91-23.*
2. *The amount of expenses on new security cameras and security devices “tied to the funding and completion of the Core Science Facility and its expansion (note in response to the ATIPP request file #015-01-91-23 the total amount was disclosed)*

[2] The search conducted by Memorial did produce responsive records; however, the Complainant insisted that further financial information was available and not released by Memorial. As evidence for this claim, the Complainant cited the recent Auditor General Report on certain aspects of Memorial’s operations. As such, the Complainant asserts that Memorial did not meet its duty to assist pursuant to section 13(1) of *ATIPPA, 2015*.

[3] Two of the records provided to the Complainant contained numerous redactions pursuant to sections 29(1)(a), 31(1)(l), and 37(1)(b) of *ATIPPA, 2015*. The Complainant requested that this Office determine whether these sections have been properly applied to the records.

[4] As informal resolution was unsuccessful, the Complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## PUBLIC BODY’S POSITION

[5] It is the position of Memorial that it met its duty to assist the Complainant. In support of this position, Memorial provided a detailed explanation of its efforts to locate records responsive to the Complainant’s request. Memorial sent the access request to five separate offices and departments of the University that could be expected to have records. Some of these offices and departments did have records and responsive records were reviewed by Memorial’s Information Access and Privacy Office and provided to the Complainant. Subsequent to the release of these documents, the Complainant advised Memorial that one

aspect of their request was not fulfilled and Memorial conducted a further search. This secondary search produced another record that was reviewed and provided to the Complainant.

- [6] With respect to the information withheld from the two records at issue, Memorial states that, in general, the records provided to the Complainant are highly sensitive and contain detailed information regarding the security services employed by the University as well as assessments on the effectiveness of some of those services. Memorial's position is that *ATIPPA, 2015* explicitly allows public bodies to withhold such information, as disclosing it would undermine critical security plans and potentially endanger employees, students and the public.

### COMPLAINANT'S POSITION

- [7] The Complainant position is that further records must be available and have not been disclosed by Memorial. To support this argument, the Complainant relies upon information contained in the Auditor General's report on Memorial, particularly the recommendation that:

*Memorial University should ensure all University expenses are reasonable and appropriately monitored, to ensure the best possible use of public resources.*

Memorial accepted this recommendation, which the Complainant has interpreted to mean that more financial information regarding their access request must be available as, if such information was not available, then Memorial would not be able to meet its commitment to fulfill the above-noted recommendation.

### DECISION

- [8] The sections of *ATIPPA, 2015* relevant to this matter is 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.*

...

29.(1)(a) *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*

...

31.(1)(l) *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 communication system*

...

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

...

*(b) interfere with public safety*

### Reasonable Search

[9] This Office has established in numerous reports that the standard a public body must meet in conducting a search for responsive records is reasonableness, not perfection. A reasonable search is organized, conducted using appropriate search terms, carried out by individuals who would be in the best position to know if records exist, and supervised by the ATIPP coordinator.

[10] As noted above, Memorial cast a wide net in its search for responsive records related to the Complainant's request. It applied the proper terms to search relevant digital databases for records. When it inadvertently overlooked an aspect of the Complainant's request, it rectified this mistake promptly. There is nothing to suggest that Memorial did not meet its duty to assist. From the evidence provided by Memorial, the efforts to assist the Complainant were reasonable.

[11] The Complainant's position that further records exist is not supported by evidence. The reliance on the statement in the Auditor General's report on Memorial does not accurately reflect the purpose of the audit performed by the Auditor General. The audit did not examine every expense paid by Memorial. The report is clear that it focused on compensation paid by

Memorial, operating expenses, and oversight. There is nothing in the Auditor General's report that suggests that it reviewed the documents sought by the Complainant or that those documents exist and were not disclosed. Memorial's acceptance of the Auditor General's recommendations about oversight does not necessarily mean that the records necessary for such oversight exist.

[12] This Office held in [A-2023-026](#), and in several other decisions, that complainants asserting that further documents exist:

*...must establish the existence of a reasonable suspicion that a public body is withholding a record, or has not undertaken an adequate search for a record. Sometimes, this takes the form of having possession of or having previously seen a document that was not included with other responsive records or media reports regarding the documents.*

The Auditor General's Memorial report does not provide further weight to the Complainant's position that further responsive records exist. The Auditor General's report does not mention the matter that is the focus of the access request. Something more specific is required for this Office to question the integrity of what appears to be a reasonable search for responsive records by Memorial. We therefore conclude that Memorial has met the duty to assist.

### Exceptions to Access

[13] With respect to the redactions in the two documents, this Office conducted a line-by-line review of the material and provided feedback to Memorial on its application of the various exceptions to access. During the investigation, Memorial provided new versions of the responsive records to the Complainant that contained fewer redactions. From the perspective of this Office, the redactions that remain in the responsive records clearly fall within the exceptions provided at sections 29(1), 31(1)(l), and 37(1)(b). Information on the number of security cameras; the shifts of security workers; the security hardware and software employed by Memorial; and the potential challenges to current security plans can all be withheld under *ATIPPA, 2015*, which Memorial has chosen to do in this circumstance.

## RECOMMENDATIONS

- [14] Under the authority of Section 47 of ATIPPA, 2015, I recommend that Memorial University continue to withhold the redacted information in accordance with sections 29(1), 31(1)(l), and 37(1)(b) of ATIPPA, 2015.
- [15] 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.
- [16] Dated at St. John's, in the Province of Newfoundland and Labrador, this 30<sup>th</sup> day of November 2023.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador