



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2017-023

September 8, 2017

Memorial University

Summary:

The Applicant made a request to Memorial University for information related to a research grant application. Memorial University provided him with information in response to his request. The Applicant filed a complaint with this Office alleging that the released records were incomplete and that some information was not provided. The Commissioner found that Memorial University conducted a reasonable search for records and fulfilled its duty to assist the Applicant under section 13 of the *ATIPPA, 2015*.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c.A1.2, sections 8, 13.

Other Resources:

OIPC Practice Bulletin: [Reasonable Search](#), March 2017.

I BACKGROUND

- [1] The Applicant made a request under the *Access to Information and Protection of Privacy Act, 2015* (the “*ATIPPA, 2015*” or the “*Act*”) to Memorial University (“*Memorial*”) for specific information related to a research grant application. Memorial provided him with information in response to his request. The Applicant was dissatisfied and filed a complaint with this Office alleging that the released records were incomplete and that some information was not provided.
- [2] During the informal resolution phase, Memorial sent the Complainant a number of what it called “supporting documents” that it had not previously provided, and in addition provided answers to further questions raised by the Complainant in his complaint.
- [3] As the complaint could not be resolved informally it was referred to formal investigation under subsection 44(4) of the *ATIPPA, 2015*.

II DECISION

- [4] The issues to be dealt with in this Report are whether the records disclosed to the Complainant were incomplete, and whether information requested by the Complainant was not provided. The first issue is essentially whether Memorial conducted a reasonable search for records and disclosed them to the Complainant. The second issue is whether Memorial responded appropriately to the questions asked by the Complainant. Both issues are governed by section 13 of the *ATIPPA, 2015*, which provides that a public body must “...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.”
- [5] This file is somewhat unusual in that in its first response to the access request Memorial did not provide the Complainant with any responsive records. Rather, it prepared a letter in which it stated that his request had been “granted in full” and attached a two-page document which contained answers to the questions contained in the request. Memorial’s explanation for this way of responding was that the request was for information – for

answers to questions – but not for records. Memorial stated that for much of the information the Complainant had requested there were in fact no records, only recollections of events and practices by individuals. What Memorial did, essentially, was create a record containing the answers to the Complainant's questions.

[6] Technically this may have appeared to be a proper response to the request. However, as it is commonly understood that an access request is a request for “records in the custody or under the control of a public body” (see the *ATIPPA, 2015*, section 8) it is perhaps not surprising that the Complainant, thinking that records responsive to the request must exist, filed a complaint.

[7] As noted above, during the course of the informal resolution process Memorial provided to the Complainant a number of documents such as e-mails or meeting notes, which contained fragments of information relevant to the initial answers to his questions. I conclude that those documents are responsive records. In addition, during the informal resolution process Memorial provided answers to further questions that had been raised by the Complainant in his complaint to this Office.

[8] Upon review I have reached the conclusion, on the first issue, that Memorial conducted a thorough and complete search for responsive records in its processing of the access request. As our Practice Bulletin, “*Reasonable Search*” states, searches must be conducted by knowledgeable staff in locations where the records in question might reasonably be located. I am satisfied that this was done.

[9] While Memorial did not initially provide the Complainant with the records that it found, it did provide them promptly after discussions with this Office that clarified matters. I am satisfied that Memorial now has provided the Complainant with all of the records found as a result of the search.

[10] On the second issue Memorial, commendably, created a record containing the information requested by the Complainant, when the Act did not strictly require it to do so. I

therefore conclude that Memorial responded appropriately to the questions asked by the Complainant.

[11] I therefore find that Memorial has fulfilled its duty to assist the Complainant as set out in section 13 of the *ATIPPA, 2015*.

[12] This complaint might have been avoided had Memorial simply provided the “supporting documents” to the Complainant as part of its first response, which it should have done because they contained information responsive to the Complainant’s request. Memorial was acting in good faith in attempting to respond completely to the request, but did delay the Complainant’s access to responsive records.

[13] Finally, I note that the Complainant made several communications to this Office following our invitation to provide submissions once formal resolution started. Unfortunately, his arguments relate to underlying disputes he appears to have with Memorial and were irrelevant to whether Memorial complied with the *ATIPPA, 2015*.

III RECOMMENDATIONS

[14] In view of my conclusions above, under the authority of section 47(1)(d) of the *ATIPPA, 2015*, I recommend that Memorial University assess whether any improvements in its access to information processes are needed to ensure that all responsive records are provided to applicants in the first instance and to report back to me the results of that review.

[15] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of Memorial University must give written notice of his or her decision in response to this recommendation to the Commissioner and any person who was sent a copy of this Report (in this case the Complainant) within 10 business days of receiving this Report.

[16] Please note that within 10 business days of receiving the decision of Memorial University under section 49, the Complainant may be able to appeal that decision to the Supreme Court of Newfoundland and Labrador, Trial Division.

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 8th day of September 2017.

Donovan Molloy, Q.C.
Information and Privacy Commissioner
Newfoundland and Labrador

