



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2020-002

January 20, 2020

Memorial University

Summary:

Memorial University (“Memorial”) received an access request for records relating to logs of domain activities involving a specific desktop computer for a specific period of time. Memorial provided records to the Applicant. The Complainant alleged that Memorial failed in its duty to assist under section 13 of the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* by failing to conduct a reasonable search for records and by not responding in an open, accurate and complete manner. The Commissioner determined that Memorial had conducted a reasonable search for records and had responded appropriately to the Complainant.

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 Report [A-2019-032](#); [A-2018-020](#); [A-2018-011](#).

Other Resources:

OIPC NL [Practice Bulletin on Reasonable Search](#).

I BACKGROUND

- [1] The Complainant made an access to information request to Memorial University (“Memorial”) as follows:

*the logs of domain activities involving the desktop computer located in [named room number] (device name: [specific number]) from September 13, 2019 between 5AM and 5PM
Possible location: the Information Technology Services (ITS)*

- [2] Memorial responded to the access request by providing the Complainant with records. The Complainant was not satisfied with Memorial’s response and filed a complaint with this Office alleging that Memorial had failed in its duty to assist under section 13 of *ATIPPA, 2015* by not conducting a reasonable search for responsive records. The Complainant also alleged that Memorial had failed in its duty to assist by refusing to provide clarifications and explanations.
- [3] 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

- [4] Memorial’s position is that it conducted a reasonable search for records and fulfilled its duty to assist under *ATIPPA, 2015*.
- [5] Memorial advised that the scope of the access request was narrow as it was for “logs of domain activities” of a specific computer. Memorial explained that the search was based on the domain activity tied to that device for the timeframe specified and the security logs of Memorial’s Domain Controllers were searched.
- [6] Memorial further advised that Memorial’s Information Access and Privacy (IAP) office consulted with Memorial’s System Administrator who manages Memorial’s domain environment in responding to this access request and that it was Memorial’s expert on Microsoft Active Directory which encompasses domain setup and activity who conducted the search.

- [7] Memorial stated that the records responsive to this request would have only resided in Memorial's Domain Controller security logs. Memorial stated that the search was straightforward and reasonable, and that records were located and provided to the Complainant.
- [8] Through specific follow up questions from this Office raised by the Complainant, Memorial provided further details. Memorial advised that the security logs were filtered by client address (IP) and date range. This information had been previously provided to the Complainant.
- [9] Memorial confirmed that the search conducted would have captured access to the computer by other IP addresses in the domain, including individuals with administrative privileges.
- [10] In one of the follow up questions by the Complainant to Memorial, he raised the "audit journal" as a possible location for responsive records. When asked if other responsive records could be located in the "audit journal" and if that area was searched, Memorial responded that it was unfamiliar with the generic term "audit journal" in the domain environment but stated that the Audit Object Access is a Microsoft Windows configuration that does not produce an "audit journal". Memorial confirmed that all domain related logs applicable to this access request were provided.
- [11] Memorial also argued in its submission that a public body's compliance with the duty to assist cannot properly be the subject of a complaint or recommendations in a Commissioner's report under *ATIPPA, 2015*.

III COMPLAINANT'S POSITION

- [12] The Complainant stated that Memorial failed in its duty to assist pursuant to section 13 of *ATIPPA, 2015* by failing to conduct a reasonable search for records.
- [13] It is the Complainant's position that Memorial improperly limited the scope of the search for responsive records and that the records provided were incomplete.

- [14] The Complainant stated that the scope of the search for responsive logs was deliberately restricted to domain activities associated with his IP address and that his IP address was used by Memorial as a filter when retrieving responsive logs. The Complainant further stated that any domain related activities involving his files that were migrated to the P: drive that were associated with another IP address in the domain were excluded from the search. The Complainant argued that the file access logs were not retrieved and that the Public Body improperly narrowed the scope of the search.
- [15] The Complainant argued that since the logs were filtered by his IP address then the list is incomplete and he believes that the IP addresses of all individuals with administrator privileges would necessarily be included within the scope of his original request. The Complainant further requested any logs from the audit journal be released and as the Complainant stated that the file audit policy is inaccessible through the Microsoft domain controller, the Complainant requested that relevant data be retrieved directly from the Linux file server.
- [16] The Complainant also alleged that Memorial did not respond in an open, accurate and complete manner since it did not continue to answer his follow up questions after the records were provided.
- [17] After the records were provided, the Complainant contacted Memorial to ask some questions as he believed the logs were not complete. Memorial responded and asked the Complainant to send a list of questions and it would try to assist. The Complainant provided two questions which Memorial answered. The Complainant then sent a number of more technical questions to Memorial. Memorial advised that since the Complainant had an ongoing privacy complaint investigation with this Office that was dealing with the domain logs, the Complainant could share his concerns with our Office. Memorial advised that the processing of the access request was completed and its file was closed. The Complainant noted that an access request and a privacy investigation are different processes that are regulated by different parts of the *ATIPPA, 2015*.

[18] The Complainant relies on Report A-2018-011 from this Office as support for the position that the duty to communicate with a requestor does not stop with the release of records. Paragraph 22 of that Report is as follows:

However, the duty to communicate with an applicant goes beyond simply notifying them of their statutory rights to appeal. Where an applicant has follow-up questions about the final response they received public bodies will likely find it to their advantage to engage with the applicant to work to resolve these issues if there is the potential of avoiding an appeal to either this Office or to the Supreme Court of Newfoundland and Labrador. I would note however, for the benefit of potential complainants, that the deadlines set by the ATIPPA, 2015 for filing an appeal would continue to apply notwithstanding any efforts to resolve a matter informally with the public body.

IV DECISION

Duty to Assist

[19] This Office has considered a public body's duty to assist previously in numerous reports. Section 13 of ATIPPA, 2015 states:

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.

(2) The applicant and the head of the public body shall communicate with one another under this Part through the coordinator.

[20] Report A-2018-020 states the position of this Office with regard to the duty to assist:

[8] It is a long held position of this Office that the duty to assist has three components, 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.

The standard for assessing a public body's efforts is reasonableness, not perfection.

- [21] The Complainant's position is that Memorial failed in its duty to assist by not conducting a reasonable search as the Complainant claims that the scope of the search was limited and the records were incomplete.
- [22] This Office asked Memorial to explain how the search had been conducted in order to assess whether or not it was reasonable. Memorial explained the search parameters – who conducted the search, where the search was done and areas searched etc. Memorial explained that the search was narrow, involving a limited time frame and the search was also very specific as it only dealt with the Complainant's desktop computer domain logs.
- [23] Memorial confirmed that the search would have captured access to the computer by other IP addresses in the domain, including individuals with administrative privileges. Memorial also confirmed that the responsive records to this access request reside in Memorial's Domain Controller security logs and would not be located elsewhere, and furthermore the search was conducted by Memorial's expert on Microsoft Active Directory, which encompasses Domain setup.
- [24] The Complainant raised issues with the scope of the search, suggesting that other areas should be searched to determine if individuals with administrator privileges accessed his computer or if there were responsive records in the audit journal. Memorial has addressed these specific questions to our satisfaction.
- [25] Furthermore the wording of the access request was for the logs of domain activities involving the Complainant's desktop computer, therefore filtering for his IP address is logical and necessary. Memorial has confirmed that the logs show all activity tied to that asset.
- [26] While the Complainant has raised numerous arguments and technical questions, it must be remembered that we are reviewing the reasonableness of the search, meaning: did a person knowledgeable in the area search in the locations where responsive records might reasonably be located. Based on these criteria, Memorial conducted a reasonable search.

[27] The Complainant also alleged that Memorial did not respond in an open, accurate and complete manner since it did not continue to answer his follow up questions after the records were provided. Memorial answered the Complainant's initial questions which led the Complainant to ask further questions. The Complainant had a related privacy complaint file ongoing with this Office and Memorial had suggested some questions may be answered through that file.

[28] The Complainant quoted from Report A-2018-011 as support for the position that the duty to communicate with a requestor does not stop with the release of records. While we encourage public bodies to try and assist applicants even after records have been provided, not all questions can be answered to the satisfaction of some applicants. If there is potential of avoiding either an appeal to this Office or to the Supreme Court of Newfoundland and Labrador then further communication may be beneficial.

[29] In this case, Memorial attempted to answer the Complainant's first round of questions, however, once the Complainant continued to ask more technical questions, Memorial determined that the best course of action was for the Complainant to deal directly with our Office as we were already investigating a privacy complaint that was related.

[30] While perhaps Memorial could have tried to answer further questions, there was already an ongoing file with this Office. Memorial's decision does not mean it failed in its duty to assist.

[31] As outlined in Report A-2019-032, Memorial argued that this Office does not have the ability to review complaints relating to the duty to assist. This issue was addressed in Report A-2019-032 and this Office maintains its position as set out in paragraph 42 of that Report:

In the course of our investigation, Memorial has also argued that this Office does not have the ability to review complaints on the duty to assist. As stated by Memorial, section 42 makes provisions for filing a complaint respecting "a decision, act or failure to act....that relates to the request". The duty to assist is a failure to act that relates to a request. It is our view that we do indeed have the jurisdiction to review this issue and to make recommendations. These recommendations can be made under section 47(d) which permits this Office to make recommendations for "other improvements for access to information be made within the public body". While section 95(2)(h) allows us to "bring to

the attention of the head of a public body a failure to fulfil the duty to assist applicants”, this provision is “in addition to” the Commissioner’s powers and duties with respect to complaint investigations. It allows us to bring such matters to the attention of the head of a public body outside of the context of a complaint investigation, but does not limit the Commissioner’s ability to do so, or to make related recommendations, in a Report resulting from a complaint. As noted above, the full scope of a complaint to the Commissioner is outlined in section 42(1). A failure of the duty to assist is a failure to act that relates to the request. On that basis we reject the assertion that our jurisdiction to address and make recommendations in a Report regarding the duty to assist is in any way limited.

V CONCLUSIONS

[32] This Office finds that Memorial fulfilled its duty to assist by conducting a reasonable search for records and responding without delay to the Complainant in an open, accurate and complete manner.

VI RECOMMENDATIONS

[33] 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 the *ATIPPA, 2015*. Therefore, I recommend that Memorial maintain its position regarding these matters.

[34] 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.

[35] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of January 2020.

A handwritten signature in blue ink, appearing to read 'M. Harvey', with a long horizontal flourish extending to the right.

Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador